STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HIGHLAND RANCH and SAN CLEMENTE RANCH, LTD., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos.	77-CE-11-X 77-CE-27-X 77-CE-13-X 77-CE-35-X 77-CE-14-X 77-CE-36-X 77-CE-19-X 77-CE-39-X 77-CE-21-X 78-CE-4-X 78-CE-5-X
	5 ALRB No. 54	

DECISION AND ORDER

On September 6, 1978, Administrative Law Officer (ALO) Robert LeProhn issued the attached Decision in this proceeding. Thereafter, Respondents, Highland Ranch and San Clemente Ranch, Ltd. (hereafter Highland and San Clemente, respectively), the United Farm Workers of America, AFL-CIO (UFW) , and the General Counsel each timely filed exceptions and a supporting brief. Highland and the General Counsel each filed an answering brief. [1/]

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs and has decided to

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[1/] Highland's answering brief to the UFW's exception argues that the exception should not be included in the record because it was not accompanied by a proof of service, signed under penalty of perjury, as required by 8 Cal. Admin. Code Section 20430. Although that section requires a signature on the proof of service filed with the Board, a signature on the copy served upon the parties is not necessary. The proof of service attached to the UFW's exception and brief filed with the Board was prepared in compliance with our regulations. We therefore reject Highland's contention that the UFW's exception and brief should be excluded from the record.

affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order as modified herein.

Removal of Francisco Ruiz Guzman from Shed Work

We affirm the ALO's conclusion that Highland violated Labor Code Section 1153(c) and (a)[2/] by removing Francisco Ruiz Guzman from shed work in late April 1977,[3/] because of his union activities. Contrary to the ALO, however, we find that other male shed workers, in addition to Ruiz, did not work in the shed after April 26. We also note that the ALO misstated David Omote's testimony. Omote testified that after he removed Ruiz from the shed, no male cauliflower trimmers remained; he did not testify that no male shed workers remained. We nonetheless affirm the ALO's conclusion on the basis of the considerable record evidence indicating that Ruiz was removed from shed work in violation of the Act, including the timing of his removal from the shed, the fact that less experienced workers were allowed to continue shed work and, most importantly, Highland's failure to return Ruiz to shed work later in the season.

Discharge of Salvador Guzman Ortiz

We affirm the ALO's conclusion that Highland violated Section 1153 (c) and (a) by discharging Salvador Guzman Ortiz because of his union activities. We place no reliance, however, upon the fact that supervisor Isaac Rodriguez did not effect that

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[2/] All statutory references in this decision are to the California Labor Code unless otherwise noted.

[3/] All dates in this decision refer to 1977 unless otherwise noted.

discharge until the end of the workday.

Refusal of Emergency Leave for Bartolo Prado Navarro

Highland excepts to the ALO's conclusion that it violated Section 1153 (a) by constructively discharging Bartolo Prado Navarro, by requiring him to quit rather than granting him an emergency leave. On September 2, Prado approached supervisor Tosh Omote and requested an emergency leave of absence because his daughter needed an operation. Omote denied the request, ostensibly because he did not know whether work would be available upon Prado's return. Omote told him to see Galvan about work. [4/] The ALO found that Omote's refusal to grant the leave was in retaliation against the employees because they voted for the UFW. [5/] We affirm the ALO's conclusion but conclude that the conduct violated Section 1153(c) as well as (a).

Highland argues that its conduct was lawful because it had no knowledge of Prado's union activities. We reject this contention because the General Counsel need not prove that an employer had knowledge of an individual discriminatee's union activities or sympathies if it can otherwise be demonstrated that the union considerations were the basis of the employer's conduct.

[4/] Fermin Galvan Torrez was a visible and important figure in the UFW's organizing drive at Highland. He had no authority to grant leaves or otherwise affect another employee's working conditions.

[5/] We infer that Omote acted in retaliation against the employees because of their union support not only for the reasons stated by the ALO, but also based on Highland's strong anti-union animus evidenced in part by its election-day conduct, owner Toby Tsuma's speech to the employees in which he threatened to discharge all employees who voted for the union, and Omote's remark that Prado should see Galvan about work.

It is sufficient for the General Counsel to show that an employer discriminated against an individual in retaliation for the union activities of the employees as a group. The Larimer Press, 222 NLRB 220, 91 LRRM 1379 (1976), enf'd in part, M.S.P. Industries, Inc. v. NLRB, 568 F.2d 166, 97 LRRM 1403 (10th Cir. 1977).

Discharge, Eviction and Detention of Fermin Galvan Torrez, Salvador Ramirez Ramirez, Jose Magana Martinez, and Salvador Flores

We affirm the ALO's conclusion that Highland discharged these four employees and evicted them from its labor camp in violation of Section 1153 (c) and (a). We also affirm the ALO's conclusion that Section 1153 (a) was not violated when Marine Corps personnel detained the employees at the base gate.

The ALO declined to follow NLRB v. Uniform Rental Service, Inc., 398 F.2d 812, 68 LRRM 2968 (6th Cir. 1968) in which the Sixth Circuit refused to enforce an order of the National Labor Relations Board (NLRB); the Court found that an employee had been discharged because she removed a notice posted by the employer rather than because of her union activities. The ALO instead followed Uniform Rental Service, 161 NLRB 187, 63 LRRM 1240 (1966)[6/] in which the NLRB found the employer's explanation to be pretextual.

We need not here decide whether Section 1148 [7/] requires us to follow decisions of the U. S. Circuit Courts of Appeal rather

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[6/] The citation appearing in the ALO's decision is incorrect.

[7/] Labor Code Section 1148 reads:

> The Board shall follow applicable precedents of the National Labor Relations Act, as amended.

than decisions of the NLRB in cases in which they conflict. The Court in Uniform Rental apparently followed the decision of the Administrative Law Judge by finding that the employer had a valid and bona fide business justification for the discharge. The Administrative Law Judge had based that determination upon the demeanor of the witnesses. The conflict between the NLRB and the Sixth Circuit is thus based upon credibility resolutions rather than upon disagreement about the applicable legal principles. A case which hinges upon the demeanor of the witnesses is not controlling precedent here. We find, as did the ALO, that the reason given by Respondent in this case was pretextual.

Highland's Refusal to Bargain

An election was held at Highland on July 28; although the UFW received a majority of the votes cast, election objections were filed, delaying the Board's certification of the UFW until November 29. While the election objections were pending, Highland negotiated a sale of its business to San Clemente, which was consummated on November 29,[8/] the same day the certification issued. Highland admits that it did not notify the UFW of the pending sale and did not meet and consult with the UFW over the effects of the sale upon its employees until after the Board certified the UFW. The ALO concluded that, because the UFW was subsequently certified, Highland violated Section 1153 (e) and (a) by failing to notify the UFW of its decision to sell the business and failing to bargain about the effects of that decision prior

[8/] The parties stipulated to this date.

to the sale.

While an employer clearly is not under an obligation to bargain towards a comprehensive collective bargaining agreement during the pendency of election objections, Sundstrand, Inc. v. NLRB, 538 F.2d 1257, 92 LRRM 3266 (7th Cir. 1976), it acts at its own peril should it unilaterally decide to change the terms or conditions of employment. The NLRB fully explained this doctrine in Mike O'Connor Chevrolet, 209 NLRB 701, 85 LRRM 1419 (1974), rev'd on other grounds, 512 F.2d 684, 88 LRRM 3121 (8th Cir. 1975):

> The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8 (a) (5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending. ... [W]e find ... that Respondent was not free to make changes in terms and conditions of employment during the pendency of post-election objections and challenges without first consulting with the Union.

See also, W. R. Grace & Co., 230 NLRB 617, 95 LRRM 1459 (1977), enf'd in part, 571 F.2d 279, 98 LRRM 2001 (5th Cir. 1978).

Highland argues that this federal precedent is inapplicable because, under the Agricultural Labor Relations Act (ALRA), it is an unfair labor practice for an employer to

bargain with an uncertified union [Section 1153(f)]. [9/] We reject that contention. In Kaplan's Fruit & Produce Co., 3 ALRB No. 28 (1977), where the employer argued that Section 1153(f) prevented it from bargaining with the UFW after the UFW's certification had expired, we said:

> The prohibition against an employer's recognizing an uncertified union is clearly directed, not towards an arbitrary time limit on bargaining, but towards preventing voluntary recognition of labor organizations. The facts in Englund v. Chavez, 8 Cal. 3d 572 [involving employer favoritism toward one of two competing unions prior to the adoption of secret ballot election procedures], are too much a part of the history leading to the enactment of the ALRA for us to consider 1153(f) as anything but a guarantee of freedom of choice to agricultural employees through the machinery of secret ballot elections. The prohibition against bargaining with an uncertified union does not and should not preclude bargaining with a union that has been chosen through a secret ballot election. (at p. 7)

The prohibition against bargaining with an uncertified union in Section 1153(f) is not a license for an employer to make unilateral changes in working conditions between an election and certification. We believe the federal precedent is applicable. While there is no legal obligation to enter into the comprehensive negotiations contemplated by Section 1155.2(a), "absent compelling economic considerations for doing so, an employer acts

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[9/] Labor Code Section 1153(f) reads:

> It shall be an unfair labor practice for an agricultural employer to do any of the following: . . .
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> (f) To recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

at its peril in making changes" in existing terms and conditions of employment while the certification issue is pending before the Board. Thus, information to and consultation with the union prior to such changes may be found to have been required by a subsequent certification of the union as the exclusive bargaining agent. [10/]

During the pendency of election objections, Highland decided to go out of business and, in fact, consummated the sale the day the certification issued. As a result of this sale, all employees living in the labor camp were evicted on short notice, including individuals who had been there for substantial periods of time. Housing had been provided to employees at minimal rent. Furthermore, employees who expected to continue working for Highland once the next agricultural operation began were denied that opportunity without notice. [11/] Highland acted at its own peril by instituting this change without first consulting with

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[10/] An employer is still, of course, required to retain a stance of neutrality as between rival unions, and is subject to Section 1153 (b) which makes it an unfair labor practice for an employer to dominate or assist a labor organization. See, for example, The Drackett Company, 207 NLRB 447, 84 LRRM 1654 (1973), enf'd 90 LRRM 2844 (7th Cir. 1974) , and Midwest Piping & Supply Co., 63 NLRB 1060, 17 LRRM 40 (1945).

[11/] This was mitigated by San Clemente's decision to hire a substantial number of Highland employees as part of its labor force. However, San Clemente did not reopen the labor camp and the record indicates that it had no intention of doing so.

the UFW over the effect of the closure upon the employees. [12/]

Because we subsequently certified the UFW as the exclusive bargaining representative of Highland's agricultural employees, we conclude that Highland's conduct violated Section 1153(e) and (a).

We shall order Highland to bargain with the UFW over the impact on bargaining unit employees of its decision to close the business. However, we note that a bargaining order, standing alone, cannot remedy the unfair labor practice. Highland's conduct deprived the employees of the opportunity to bargain over the effects of the sale at a time when the UFW had some measure of economic strength;[13/] this conduct makes it highly unlikely that meaningful bargaining will take place. We will, therefore, provide a limited make-whole remedy designed to create conditions similar to those that would have been present had Highland consulted with the UFW prior to the end of the harvest and the consummation of the sale. To do otherwise would simply reward Highland's failure to notify and consult with the UFW concerning the facts surrounding the sale. J-B Enterprises, 237 NLRB No. 55, 99 LRRM 1432 (1978); W. R. Grace & Co., supra; Transmarine Navigation Corporation, 170 NLRB 389, 67 LRRM 1419 (1968).

[12/] Although it is not an unfair labor practice for an employer to go out of business without bargaining over the decision to do so, it is an unfair labor practice to refuse to bargain about the effects of that decision on the employees involved. Summit Tooling Co., 195 NLRB 479, 79 LRRM 1396 (1972), enf'd 83 LRRM 2045 (7th Cir. 1973).

[13/] For this reason, we find that Highland did not discharge its duty by coming to the bargaining table on December 2, after the sale had been consummated, the employees had been laid off and the labor camp had been closed.

In accord with the remedy developed by the NLRB for this type of violation (Transmarine Navigational Corporation, supra), we will order Highland to pay to its agricultural employees their daily wages as of November 28, 1977, from five days after the issuance of this Decision until: (1) the date Highland bargains to agreement with the UFW about the impact of its decision to close the business; or (2) the date Highland and the UFW bargain to a bona fide impasse; or (3) the failure of the UFW to request bargaining within five days after issuance of this Decision or to commence negotiations within five days after Highland's notice of its desire to bargain; or (4) the subsequent failure of the UFW to bargain in good faith. In no event shall the back pay period exceed the period of time necessary for the employees to obtain alternative employment and, for those employees who were evicted from the labor camp, to obtain other, comparable housing.

Despite Highland's violation of Section 1153(e) and (a) by failing to consult with the UFW over the effects of its closure, we nevertheless find that Highland did not violate Section 1153(e) and (a) by its bargaining table conduct. Because only one meeting took place, it is impossible to determine whether Highland was engaging in surface bargaining.

San Clemente's Refusal to Bargain and Liability for Highland's Unfair Labor Practices

San Clemente purchased Highland's business on November 29, 1977. The ALO concluded that, as a successor to Highland, San Clemente violated Section 1153(e) and (a)

by failing to bargain with, the UFW. Although San elements admits that it refused to meet with and supply relevant information to the UFW, it contends that it was not a successor and was therefore not under an obligation to bargain.

This is our first case presenting successorship issues. As the Supreme Court noted in Howard Johnson v. Detroit Joint Exec. Bd., 417 U.S. 259, 86 LRRM 2449 (1974), the successorship question is difficult, arising in extremely varied factual circumstances and legal contexts. A traditional common-law approach is therefore particularly appropriate, and we shall deal with successorship issues on a case-by-case basis.

The NLRB and the courts during years of deciding cases in this area have established certain principles regarding the impact of changes in the ownership or business structure of an employing entity upon the interests of capital and those of labor. The first principle is that some balance is to be struck between the rights of employers and those of employees. The Supreme Court of the United States has said:

> The objectives of national labor policy ... require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship. John Wiley & Sons v. Livingston, 376 U.S. 543, 55 LRRM 2772 (1964) .

This principle is no less appropriate in California agriculture than in. the nation's other industries, although it may be more difficult to apply.

Both sides of the balance we must attempt to strike

between the interests of employers and employees in successorship cases present complexities unique to California's agricultural industry. With respect to employers, there is often a difficulty in determining who is the employer of a particular group of employees. See, e.g., Joe Maggio, Inc., 5 ALRB No. 26 (1979); Jack Stowells, Jr., 3 ALRB No. 93 (1977). Due to the presence of custom harvesters, land management groups, harvesting associations and labor contractors on the agricultural scene, a sale of certain land or crops to another may have nothing to do with, or may have everything to do with, the rights of employees. In addition, changes occur with unusual frequency in the ownership of property interests in land and crops. See Herman and Zenor, "Agricultural Labor and California Land Transactions" in California State Bar Journal, January/February, 1978, pp. 48-57.

With respect to employees, on the other side of the balance, we confront a work force of which a large part moves from one section of the state to another according to the change of crop seasons and the availability of work. See Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392, 128 Cal. Rptr. 183 (1976). As a result of the seasonal nature of the work and the migratory patterns of large numbers of workers, the industry has a high labor turnover. Each season brings with it another hiring process. One crop may have as many as three distinct hiring periods during the course of a year. The unskilled nature of much of the work makes employees more easily replaceable, further contributing to the turnover. Constant personnel changes are also caused by the presence of labor

contractors who provide employees to several different growers. Labor contractors are widely used to supplement more permanent labor forces during times of heavy agricultural employment needs. It is not uncommon for labor contractors to supply one group of employees to different growers at different locations on successive days of a given week. Further personnel changes or turnover result from the day-haul system whereby workers are obtained on a day-to-day basis at well-known pickup points. Often these workers are selected on a first-come, first-served basis: whichever workers board the transporting bus first have a job for the day. This system is particularly prevalent along the California-Mexico border. (See S. Sosnick, Hired Hands: Seasonal Farm Workers in the United States [McNally & Loftin 1978].) Thousands of the state's agricultural employees belong to a fluid, mobile labor pool, making themselves available wherever there is work to be done. Protecting the collective bargaining rights of these workers from erosion due to changes in the ownership of an employing entity, without unduly burdening the transferability of capital in the agricultural industry, is a challenge of no small proportions.

Turning from these general considerations to the case before us, San Clemente argues that it is not a successor for purposes of the Agricultural Labor Relations Act because, as of the date it hired its full complement of employees, a majority of

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those employees had not previously been employed by Highland. [14/]

In support of its position, San Clemente cites NLRB v. Burns Int'l Security Services, 406 U.S. 272, 80 LRRM 2225 (1972) and Howard Johnson, supra. In Burns, one security service company bid successfully against another that had previously held a contract to provide security services at an aircraft plant. The successor security service hired a majority of its employees from its predecessor. The Supreme Court held that while the successor could not be ordered to assume the obligations of its predecessor's labor contract, it could be ordered to bargain with the collective bargaining representative selected by the predecessor's employees. This conclusion was based upon a finding that Burns had "selected as its work force the employees of the previous employer to perform the same tasks at the same place they had worked in the past." 406 U.S. at 278; 80 LRRM at 2227. In Howard Johnson, a family-owned restaurant and motel were transferred to the Howard Johnson Co. by a sale of the personal property and a leasing of the real property. Only nine of the predecessor's 53 employees were employed by the successor, Howard Johnson Co. A labor contract had covered the 53 employees. The

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[14/] The UFW filed a motion to reopen the record for admission of new evidence. The UFW requests that we admit into evidence a letter sent by San Clemente to the UFW in October, 1978, subsequent to the close of the hearing and the issuance of the ALO's Decision. The letter stated San Clemente's intention to bargain with the UFW but reserved all its defenses in this unfair labor practice proceeding. Contrary to the UFW, we do not believe this letter constitutes an admission that San Clemente is a successor to Highland. The letter, if admitted into evidence, would have no significant effect on our Decision. Accordingly, the UFW's motion is denied.

union brought an action to compel arbitration concerning Howard Johnson's refusal to hire the former employees. The Court denied arbitration primarily because the successor had not retained within its own work force a majority of the predecessor's employees. In the instant case, as no contract existed between Highland and the UFW as of the date the business was sold, we are concerned only with whether the successor employer, San Clemente, had a duty to bargain with the UFW as the chosen representative of the employees.

Given the unusual characteristics of agricultural ownership patterns and the agricultural labor force, [15/] as described above, an approach to successorship which examines factors in addition to the continuity of the work force is most appropriate. Undue emphasis on the continuity of the work force factor at the expense of other relevant factors would render the important protection provided employees by the successorship principle almost entirely ineffective. We will, therefore, not ignore this factor but will give careful consideration to other factors as well.

Highland completed the sale of its leasehold interest [16/]

[15/] While not directly on point, we note with interest the special voter's eligibility rule the NLRB developed in industries dealing with high employee turnover and intermittent employees. Hondo Drilling Co., 164 NLRB 416, 65 LRRM 1094; 428 F.2d 943, 74 LRRM 2616. Daniel Constr. Co., 133 NLRB 264, 48 LRRM 1636 (1961). The mobile pool of seasonal workers is one aspect to be considered, to the extent that continuity of work force is relevant in agriculture.

[16/] Highland's fields were located on a Marine base, the property of the federal government.

and equipment to San Clemente on November 29. San Clemente took possession of the land and equipment on December 1. This date coincided with the end of the tomato harvest. On December 1, San Clemente hired four individuals, three supervisors and one irrigator, who had been employed by Highland. On December 9 the UFW requested bargaining with San Clemente, which rejected the request. By the end of February 1978, San Clemente had a work force of 49, of which 46 had been Highland employees. On March 14, 1978, it began obtaining some of its employees through a labor contractor. By March 25, 1978, it had 150 employees, 42 of whom were supplied by the labor contractor and 70 of whom were former Highland employees. San Clemente continued to grow basically the same crops on the same land and processed them at the same packing shed.

The fluctuating size of the work force at this operation is typical of California agriculture. In the face of such fluctuations we are unwilling to adopt the position urged by San Clemente that, first, whether it is to be regarded as Highland's successor for purposes of the Act should depend solely on the number of former Highland employees who were in San Clemente's work force when it had hired its "full complement" of employees and, second, that the "full complement" of employees means 50 percent of the workers it employs at its peak employment period. A rigid, mechanical rule of this sort is ill-suited to the complex realities of the industry and would be a poor substitute for the exercise of judgment on the particular facts of each case.

In this case, because the sale occurred in the

"off-season", the only employee that was apparently needed on December 1, when San Clemente took possession, was an irrigator to maintain cabbage that had been planted, the tomato harvest having just ended. As the crop grew and needed additional care, and as other crops were planted, the work force continued to increase until harvest and the ensuing layoffs. Unlike the industrial setting, an agricultural employer's full complement of employees can vary from day to day and season to season. On December 1, the Employer's full complement of workers may well have been only four or even one. To permit a succeeding employer to abolish the rights of his predecessor's employees by the hiring of one or two individuals would make a mockery of the principle that employees' collective bargaining rights are entitled to protection when the ownership or structure of an enterprise is changed.[17/] On the other hand, the time elapsing between an off-season sale and the first subsequent peak may generally be considerable. An employer who is subsequently found to be a successor would thus be in a position to evade its duty to bargain for a significant period of time during which collective bargaining should already have been underway. Again, this dilemma is brought about by the seasonality and high turnover prevalent in the agricultural context.

Despite the transfer of ownership from Highland to San Clemente, the agricultural operation itself remained almost identical. There was no significant alteration in the nature of

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[17/] We note that San Clemente succeeded to Highland's interests just after our certification issued.

the bargaining unit. See NLRB v. Burns Int'l Security Services, supra. Unit employees perform the same tasks for San Clemente which they previously performed for Highland since San Clemente grows essentially the same crops. The size of the unit also remained the same. Furthermore, San Clemente is farming the same land as Highland, having acquired the lease to all of Highland's agricultural property. It has also acquired Highland's agricultural machinery which it uses in its farming operations. In these circumstances, meaningful principles of successorship can be given effect only by finding that San Clemente is Highland's successor. For us to reach the contrary result would be to miss the forest for the trees.

Accordingly, based upon all of the above factors, we find that San Clemente is a successor to Highland and that it violated its duty to bargain with the UFW by refusing to meet and to supply relevant information. The refusal to bargain commenced on December 9. San Clemente received the UFW's first demand to bargain on that date and had not embarked upon any action evidencing an intent to significantly alter the agricultural operation; neither did it inform the UFW that any such change was contemplated. We also find that, as a successor, San Clemente is jointly and severally liable for the unfair labor practices committed by Highland prior to the date of sale. Golden State Bottling Co. v. NLRB, 414 U.S. 168, 84 LRRM 1839 (1973). The record indicates that San Clemente had knowledge that a number of unfair labor practice disputes existed between Highland and the UFW; it is not necessary for it to have

knowledge of the nature of each individual charge.

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that:

1. Respondent Highland Ranch, its officers, agents, successors and assigns, shall cease and desist from:

(a) Discouraging employees' membership in, or activities on behalf of the UFW, or any other labor organization, by discharging or by otherwise discriminating against employees in regard to their tenure of employment or any term or condition of employment, except as authorized by Section 1153(c) of the Act,

(b) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to them by Labor Code Section 1152.

2. Respondent San Clemente Ranch, Ltd., its officers, agents, successors and assigns, shall cease and desist from:

(a) Refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(a), with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees in violation of Labor Code Section 1153(e) and (a), and in particular: (1) refusing to meet at reasonable times and confer in good faith and submit meaningful bargaining proposals with respect to wages, hours and other terms and conditions of employment; (2) refusing to furnish the UFW with relevant and necessary information requested for purposes of bargaining; and (3) making unilateral changes in terms and

conditions of employment of its employees without notice to and bargaining with the UFW.

(b) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to them by Labor Code Section 1152.

3. Respondent Highland Ranch and Respondent San Clemente, their officers, agents, successors and assigns, shall jointly and severally take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Make whole Francisco Ruiz Guzman for any loss of overtime pay incurred because of his discriminatory removal from the shed crew on April 26, 1977, and the discriminatory refusal to return him to the shed crew, together with interest thereon at the rate of seven percent per annum.

(b) Make whole Salvador Ramirez Ramirez for any loss of pay he has suffered because of the discriminatory refusal to assign him to tractor driving during the 1977 corn harvest, together with interest thereon at the rate of seven percent per annum.

(c) Make whole Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores for any loss of pay incurred by them during November 1977, because of their discriminatory discharge on November 1, together with interest thereon at the rate of seven percent per annum, and make each of them whole for any economic loss incurred by reason of his eviction from the labor camp of Respondent Highland Ranch on November 1, 1977.

(d) Make whole Francisco Perez Navarro for any loss of pay incurred by him because he was discriminatorily discharged on August 9, 1977, together with interest thereon at seven percent per annum.

(e) Make whole Bartolo Prado Navarro for any loss of pay incurred because of his discriminatory constructive discharge together with interest thereon at the rate of seven percent per annum.

(f) Make whole Salvador Guzman Ortiz for any loss of pay he has suffered because of his discriminatory discharge, together with interest thereon at the rate of seven percent per annum.

(g) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due employees under the terms of this Order.

4. Respondent Highland Ranch, its officers, agents, successors and assigns, shall take the following additional affirmative actions deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the UFW with respect to the effects upon its former employees of its termination of operations, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay its terminated employees their normal wages for the period set forth on page 10 of the attached Decision.

(c) Furnish the UFW with the information requested by it relevant to the preparation for and conduct of collective bargaining.

(d) Sign the Notice to Highland Ranch Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes hereinafter set forth.

(e) Mail copies of the attached Notice in appropriate languages, within 30 days after issuance of this Order, to all employees employed at any time between July 28, 1977, and December 1, 1977.

(f) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

5. Respondent San Clemente Ranch, Ltd., its officers, agents, successors and assigns, shall take the following additional affirmative actions deemed necessary to effectuate the purposes of the Act:

(a) Offer Salvador Ramirez Ramirez, Francisco Ruiz Guzman and Francisco Perez Navarro immediate and full reinstatement to their former positions or substantially equivalent jobs without prejudice to their seniority or other rights and privileges.

(b) Upon request, meet and bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Furnish to the UFW the information requested by it relevant to the preparation for and conduct of collective bargaining.

(d) Make whole those employees employed by Respondent San Clemente in the appropriate bargaining unit at any time between the date of Respondent's first refusal to bargain on or about December 9, 1977, to the date on which Respondent San Clemente commences collective bargaining in good faith and thereafter bargains to contract or impasse, for any losses they have suffered as a result of the aforesaid refusal to bargain in good faith, as those losses have been defined in Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978).

(e) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due employees under the terms of this Order.

(f) Sign the Notice to San Clemente Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent San Clemente shall thereafter reproduce sufficient copies in each language for the purposes set forth hereafter.

(g) Post copies of the attached Notice on its premises for 90 consecutive days, the posting period and places

to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(h) Mail copies of the attached Notice in appropriate languages, within 30 days after issuance of this Order, to all employees employed at any time between December 9, 1977, and the date on which Respondent San Clemente commences to bargain in good faith and thereafter bargains to contract or impasse.

(i) Arrange for a representative of Respondent or a Board agent to read the attached Notice in appropriate languages to the assembled employees of Respondent San Clemente on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent San Clemente to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with the Order.

It is further ordered that the certification of the

United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative for Respondent San Clemente's agricultural employees, be amended to name San Clemente Ranch, Ltd., as the Employer and extended for a period of one year from the date on which Respondent San Clemente commences to bargain in good faith with said Union.

Dated: August 16, 1979

GERALD A. BROWN, Chairman

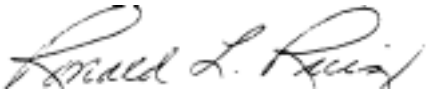
HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

MEMBER RUIZ, Concurring:

While I fully support the majority's decision to apply the "at its peril" doctrine to Highland's failure to notify the UFW about its decision to close the business and to consult with the UFW about the effects of that decision upon its employees, I do so for slightly different reasons. I believe that we are fully justified in applying federal precedent in this area notwithstanding Labor Code Section 1153 (f) because 1153 (f) was intended solely to prevent circumvention of this Board's secret ballot election machinery by an employer's voluntary recognition of a labor organization which, in fact, did not enjoy majority support among the employer's employees.[1/] It was not intended to apply to this situation where a secret ballot election has already been held and the employees are fully protected from the evils 1153 (f) was meant to prevent. Kaplan's Fruit & Produce Co., 3 ALRB No. 28 (1977).

Dated: August 16, 1979



RONALD L. RUIZ, Member

[1/] See Englund v. Chavez, 8 Cal. 3d 572, 105 Cal. Rptr. 521, 504 P.2d 457 (1972) where the Supreme Court explained, in detail, this history of voluntary recognition in agriculture.

NOTICE TO HIGHLAND RANCH EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain about the effects of our decision to go out of business and by discharging and changing the working conditions of certain employees because of their union activities. The Board has ordered us to distribute this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

1. To organize themselves;
2. To form, join or help any union;
3. To bargain as a group and to choose anyone they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect each other; and
5. To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain in good faith with the UFW about the effects on our employees of our decision to sell our business because it was the representative chosen by our employees.

WE WILL pay to each of the employees employed by us on November 29, 1977, their normal wages for the period required in the Decision and Order of the ALRB.

WE WILL, jointly and severally with San Clemente Ranch, Ltd., pay back pay and interest as required by the Decision and Order of the ALRB to the following: Francisco Perez Navarro, Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez, Salvador Flores, Francisco Ruiz Guzman, Bartolo Prado Navarro and Salvador Guzman Ortiz.

WE WILL, jointly and severally with San Clemente Ranch, Ltd., pay the following employees for losses resulting from their eviction from the Highland Ranch labor camp: Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores.

Dated: HIGHLAND RANCH, INC.

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

NOTICE TO SAN CLEMENTE RANCH, LTD. EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take certain other actions. We will do that the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

1. To organize themselves;

2. To form, join or help any union;

3. To bargain as a group and to choose anyone they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect each other; and

5. To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by Highland Ranch employees and we are a successor to Highland Ranch.

WE WILL reimburse each of the employees employed by us after December 9, 1977, for any loss of pay or other economic losses sustained by them because we have refused to bargain with the UFW, plus interest computed as 7 percent per annum.

WE WILL reinstate Francisco Perez Navarro to his former job at Highland Ranch and jointly and severally with Highland Ranch give him back pay plus 7 percent interest, for any losses he had while he was off work.

WE WILL, jointly and severally with Highland Ranch, give back pay plus 7 percent interest to Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores for any losses that they had while they were off work in November 1977. WE WILL, jointly and severally with Highland Ranch, pay these persons for any losses suffered as a result of their eviction from the Highland labor camp on November 1, 1977, plus 7 percent interest.

WE WILL, jointly and severally with Highland Ranch, give back pay plus 7 percent interest to Salvador Ramirez Ramirez for any losses he had by not being assigned to drive harvest tractor during Highland Ranch's 1977 corn harvest and will offer him immediate and full reinstatement to his former position or a substantially equivalent job without prejudice to his seniority or other rights and privileges.

WE WILL, jointly and severally with Highland Ranch, give back pay plus 7 percent interest to Francisco Ruiz Guzman to reimburse him for any loss of overtime work he sustained because he was taken off packing shed work and will offer him immediate and full reinstatement to his former position or substantially equivalent job without prejudice to his seniority or other rights and privileges.

WE WILL, jointly and severally with Highland Ranch, give back pay plus 7 percent interest to Bartolo Prado Navarro for any loss of pay he suffered by being denied an emergency leave of absence.

WE WILL, jointly and severally with Highland Ranch, give back pay plus 7 percent interest to Salvador Guzman Ortiz for any loss of pay he suffered because of his discriminatory discharge.

Dated: SAN CLEMENTE RANCH, LTD.

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Highland Ranch and San Clemente Ranch, Ltd. (UFW)	5 ALRB No. 54 Case Nos. 77-CE-11/13/14/19/21/ 27/35/36/39-X 78-CE-4/5-X

ALO DECISION

The ALO held that Highland Ranch violated Section 1153(c) and (a) by removing Francisco Ruiz Guzman from its shed crew because of his union activities, rejecting as pretextual Highland's defenses that more male workers were needed in the field and that Guzman was not returned to shed work because his work in the field was inadequate.

The ALO held that Highland violated Section 1153(a) by changing employee benefits and work rules to thwart organizational activity in its fields, rejecting Highland's contention that this matter, not alleged in the complaint, was not fully litigated at the hearing.

The ALO held that Highland violated Section 1153(c) and (a) by failing to assign Salvador Ramirez Ramirez to harvest-tractor driving because of his union activities, rejecting as pretextual Highland's defense that another employee was a better driver and that Ramirez' past driving had been substandard.

The ALO concluded that Highland violated Section 1153 (a) by preventing ALRB agents from conducting a representation election at its fields, noting that although Highland may have believed that it was under no obligation to permit the election to be held on its leasehold property, good faith is not a defense to a violation of Section 1153(a).

The ALO held that Highland violated Section 1153 (c) and (a) by discharging Francisco Perez Navarro because of his union activities, rejecting as pretextual the defense that Perez was discharged solely because he overstayed a leave of absence without notifying Highland.

The ALO held that Highland violated Section 1153 (c) and (a) by discharging Salvador Guzman Ortiz because of his union activities, rejecting as pretextual Highland's defense that it discharged Guzman solely because his work was inadequate and he insolently refused to improve his performance.

The ALO held that Highland violated Section 1153(a) by constructively discharging Bartolo Prado Navarro by denying him an emergency leave of absence. Although Highland may not have known of Prado's union activities, the ALO concluded that its conduct was a violation of the Act, finding that its asserted defense was pretextual and noting the probability that other employees would interpret the constructive discharge as retaliation by Highland for the UFW's election victory.

The ALO concluded that the General Counsel failed to prove that Highland constructively discharged Guadalupe Ruiz and Juan Carranza in violation of Section 1153(c) and (a), finding that Highland did not deprive these employees of transportation to the fields because of their union activities.

The ALO held that Highland violated Section 1153(c) and (a) by discharging four employees and evicting them from its labor camp because of their union activities, rejecting as pretextual Highland's defense that they were discharged for removing a company notice from a bulletin board. The ALO found that the General Counsel failed to prove that these employees were unlawfully detained as they were leaving the Marine Corps base upon which Highland's fields were located.

The ALO concluded that Highland violated Section 1153 (e) and (a), by failing to notify the UFW of its decision to go out of business and failing to bargain with the UFW about the effects of that decision on its employees. The ALO held that Section 1153(f], which prohibits bargaining with an uncertified union, was not applicable to this situation because, in view of the fact that the objections to the election had already been dismissed, the UFW, although not officially certified, was at least constructively certified. The ALO concluded that Highland also violated Section 1153 (e) and (a) by failing to provide requested and relevant information to the UFW with reasonable promptness, but did not violate the Act by its failure to provide fringe-benefit data, as such data were not reasonably related to the effect on employees of Highland's going out of business.

The ALO found that the General Counsel failed to prove that Highland engaged in bad-faith bargaining in its one meeting with the UFW after it closed its business, although Highland rejected the UFW's bargaining demands in their entirety at that meeting.

The ALO concluded that Respondent San Clemente Ranch violated Section 1153 (e) and (a) by refusing to meet and bargain with the UFW, finding that San Clemente was a successor to Highland because there was a substantial continuity of the business operation and as a majority of San Clemente's employees were former employees of Highland at the time the UFW requested bargaining with San Clemente. The ALO also found an additional violation of Section 1153 (e) and (a) in San Clemente's refusal to provide the UFW with requested and relevant information.

BOARD DECISION

The Board affirmed all conclusions of the ALO but, on several issues, for reasons different from those of the ALO.

The Board concluded that Highland constructively discharged Bartolo Prado Navarro in violation of Section 1153 (c) and (a), notwithstanding the fact that Highland had no knowledge of Prado’s union activities, holding that proof of such knowledge was not necessary as it found that Prado was discriminated against in retaliation for the union activities of the employees as a whole.

The Board agreed with the ALO that Section 1153 (f) did not justify Highland's refusal to bargain during the period between the election and the issuance of certification but did not adopt the ALO's theory of constructive certification. The Board held that Section 1153 (f) does not prohibit an employer from notifying and conferring with a union which had won an ALRB election about the impact on its employees of the sale of its business because such notice and conferring does not constitute bargaining as defined in Section 1155.2 (a).

The Board affirmed the ALO's conclusions that San Clemente is a successor to Highland and violated Section 1153(e) and (a) by failing to meet, bargain with, and furnish requested information to the UFW. However, the Board based its conclusion that San Clemente was a successor upon the substantial continuity of the agricultural operation and the fact that the successor utilized the same general sources of agricultural labor as did the predecessor, rather than relying on the number or percentage of the predecessor's employees who were working for the successor at the time of the bargaining demand, or at any particular time following the sale of the business.

THE REMEDY

The Board ordered Highland Ranch and San Clemente Ranch, jointly and severally, to reimburse each of the discriminatees for any loss of pay and other economic losses resulting from Highland's unlawful acts and conduct and ordered San Clemente to reinstate the discriminatees to their former or substantially equivalent positions.

The Board ordered Highland to meet and confer with the UFW over the impact on former employees of its decision to go out of business and to provide its former employees with their wages for a period not in excess of the time it would have taken them to obtain alternative employment and housing, or until such time as agreement or impasse is reached between the UFW and Highland.

The Board ordered San Clemente Ranch to meet and bargain with the UFW and ordered it to make its employees whole for any loss of pay incurred because of its refusal to bargain with the UFW.

The Board also ordered that appropriate remedial Notices to Employees be signed, read, mailed, distributed, and posted.

CONCURRING OPINION

Member Ruiz concurred with the majority's opinion in all respects except that he would hold that Section 1153(f) is not applicable to issues arising from an employer's conduct subsequent to a Board-conducted secret-ballot election regardless of whether a final decision on certification has been reached.

* * * * * * *

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

HIGHLAND RANCH; SAN CLEMENTE RANCH, LTD. Respondents and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party	Case Nos. 77-CE-11-X 77-CE-13-X 77-CE-14-X 77-CE-19-X 77-CE-21-X 77-CE-27-X 77-CE-35-X 77-CE-36-X 77-CE-39-X 78-CE-4-X 78-CE-5-X

Appearances By:

Jorge Carrillo, Esq. and
Warren Bachtel, Esq., of San Diego,
California, for the General Counsel

Robert P. Roy, Esq., of Oxnard, California,
and James Leather, Esq., of Glendale,
Arizona, for Respondent San Clemente Ranch,
Ltd.

Charlie Stoll, Esq. and
Richard Andrade, Esq., of Newport Beach,
California, for Respondent Highland Ranch

E. Michael Heumann, III, Esq., of
Salinas, California, and
Joseph Digman for the Charging Party

DECISION

STATEMENT OF THE CASE

Robert LeProhn, Administrative Law Officer: This case was heard before me in San Diego, California, between March 13, 1978, and March 30, 1978.

On November 2, 1977, the United Farm Workers of America (AFL-CIO)_1/ filed an unfair labor practice charge against Respondent Highland Ranch, Case No. 77-CE-21-X. Complaint on this charge issued November 7, 1977; Highland filed a timely answer.

On December 22, 1977, the General Counsel filed a First Amended Complaint which incorporated charges filed by the UFW on August 10, 1977 (77-CE-14-X), September 22, 1977 (77-CE-19-X), and on July 29, 1977 (77-CE-11-X).

On February 8, 1978, the General Counsel filed a Second Amended Complaint which incorporated the following additional charges against Respondent Highland: 77-CE-13-X, filed August 10, 1977; 77-CE-14-X, filed August 10, 1977; 77-CE-27-X, filed December 1, 1977; 77-CE-35-X, filed December 14, 1977; and 78-CE-5-X, filed January 11, 1978.

San Clemente Ranch, Ltd. (San Clemente) was the charged party in Case No. 78-CE-4-X, filed January 9, 1978, and was named as a Respondent in the second amended complaint. San Clemente filed a timely answer to the second amended complaint.

On February 22, 1978, the General Counsel filed a Third Amended Complaint incorporating a charge, 77-CE-36-X, filed December 14, 1977, against Highland Ranch/Thomas Deerforf, aka.

On March 3, 1978, the Fourth Amended Complaint was filed. It incorporated Case No. 77-CE-39-X, filed December 19, 1977, against Highland Ranch.

Respondent Highland filed a timely answer to the original complaint, and Respondent San Clemente filed a timely answer to the second amended complaint. Pursuant to 8 Cal. Admin. Code Section 20230, each Respondent is deemed to have denied matters alleged in amended complaints filed subsequent to the filing of an answer, except as to matters admitted in the answer.

The above cases were consolidated for hearing. The charges, complaint and amended complaints were duly served upon the appropriate Respondent. 2/

A representation election was held among Highland's agricultural employees on July 28, 1977. The results were as follows: 187 UFW, 14 No Union, 2 unresolved challenges. On August 1, 1977, Respondent Highland filed objections to the election, contending the Agricultural Labor Relations Board had no jurisdiction to conduct an election on Federal property and also charging Board agent misconduct. On October 12, 1977, the Executive Secretary issued an order to show cause why the objections should not be dismissed. The

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1/Hereafter "UFW."

2/Reference hereinafter to the complaint and paragraphs therein is to the paragraphs as they appear in the second amended complaint, as amended.

objections were dismissed on November 2, 1977. On November 29, 1977, the results of the election were certified. 3/

On November 9, 1977, the Board sought and obtained in Superior Court a TRO restraining Highland Ranch from refusing and failing to reinstate Fermin Galvan Torres, Jose Magana Martinez, Salvador Ramirez and Salvador Flores to their jobs and to the labor camp. The TRO was dissolved December 1, 1977.

At the outset of the hearing the United Farm Workers, as Charging Party, moved to intervene in the proceedings. Its motion was granted.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. Jurisdiction

San Clemente Ranch, is a limited partnership engaged in agricultural operations in San Diego County, California. It began its operations on December 1, 1977, with the acquisition of the farm equipment and leasehold interest of Highland Ranch. Since December 1, 1977, San Clemente has been engaged in the growing and harvesting of various agricultural commodities. San Clemente is engaged in agriculture within the meaning of Labor Code Section 1140.4 (a) and is an agricultural employer within the meaning of Labor Code Section 1140.4(c).

Highland Ranch is a California corporation which was during the time frame in which it is alleged to have violated the Agricultural Labor Relations Act engaged in San Diego County, California, in the growing, harvesting, packing and marketing of various agricultural commodities. It was at all relevant times prior to December 1, 1977, engaged in agriculture as defined in Labor Code Section 1140.4(a) and was an agricultural employer within the meaning of Labor Code Section 1140.4(c).

Respondents admit, and I so find, that the UFW is- a labor organization within the meaning of Labor Code Section 1140.4(f).

II. Supervisors

A. Highland Ranch:

The parties stipulated that Toby Tsuma, Tosh Omote, Thomas Tanaka, Isaac Rodriguez, Guadalupe Velasquez and Antonio Bedolla were Highland Ranch supervisors within the meaning of Labor Code Section 1140.4(j). On the basis of this stipulation and testimony in the record regarding their activities, I find each to be a statutory supervisor.

3/Case No. 77-RC-161-X.

Julian Prieto, Telesforo Hernandez, Raul Reyes and Margarito Robles, while employed at Highland Ranch, had authority to give warnings to workers. Each was in charge of a crew. Each had the authority to grant workers days off and had the responsibility of reporting regarding any improper work performance in their crew to their superiors.

The duties and responsibilities of Prieto, Hernandez, Reyes and Robles while employed at Highland were identical to those of persons stipulated to be supervisors. I find each of them to be supervisors as defined in Labor Code Section 1140.4(j).

B. San Clemente Ranch:

The parties stipulated that Respondent San Clemente had employed as supervisors the following former Highland supervisors: Bedolla, Velasquez, Reyes, Hernandez and Prieto. It was further stipulated, and I find, that the named individuals are supervisors, within the meaning of the Act, in the employ of San Clemente.

III. Respondents' Operations

A. Highland Ranch:

For some years prior to November 30, 1977, Highland Ranch was engaged in growing, harvesting and marketing tomatoes, cauliflower, cabbage, cucumbers and corn.

Work on the tomato crop begins in March. The first step is land preparation which involves plowing, discing and fumigating the soil; then follows planting, fertilization and staking of the vines. During the growth period, the plants are weeded, sprayed and repeatedly tied. Since Highland's tomatoes were grown for market rather than for canneries, they were hand-picked. The harvest starts in late June or early July. During July another crop of tomatoes was being planted in other acreage. Highland customarily devoted about 175 acres to its tomato crop.

Two crops of cauliflower were farmed. The winter crop was planted during July and August and harvested from January through March of the following year. The spring crop was planted in December and harvested in late March and April. Approximately 180 acres were devoted to the two crops. Preparation of a seed bed is the first step in growing cauliflower. Approximately a month later the cauliflower is transplanted to the fields. Thereafter the normal cultural practices of fertilization, cultivation, irrigation and insecticide spraying are carried on until the plants get too large to permit the use of equipment. Cauliflower is hand-harvested. Crews of five field workers cut the cauliflower, and throw it directly into a trailer being pulled down the row by a small rubber-tired tractor. Loaded field trailers were transferred to another tractor and pulled to the packing shed.

Land preparation for the cabbage crop begins in

October with planting taking place in November. The land is first furrowed and then seeded. During the growing process, the crop is repeatedly sprinkled, irrigated and thinned. The cabbage harvest begins in March. Approximately 50 acres were devoted to cabbage during the 1976-1977 season. Highland planted no cabbage in 1977.

Corn is planted from March through June and harvested from July through September. Nine corn crops were planted in 1977. The cultural practices described above are also utilized in raising corn.

The cucumber crop requires land preparation followed by fertilization, seeding and covering the crop with plastic. During the growth cycle the crop is weeded and drip-irrigated. Customarily Highland planted cucumbers in late February or early March and harvested during May.

Highland operated a packing shed on its ranch property. All the crops described above were moved from the fields through the shed for packing and ultimately to market. The harvested product was brought to the shed, put on a conveyor belt, sorted and packaged. An ancillary function was the forming of the cartons used to package the produce.

B . San Clemente Ranch:

San Clemente Ranch, Ltd. is a limited partnership established for the sole purpose of farming the leasehold acquired from Highland Ranch. Deardorff-Jackson, a California corporation, is the general partner in San Clemente. None of the persons having an ownership interest in Highland Ranch have such an interest in either San Clemente or Deardorff-Jackson. None of the former officials of Highland Ranch are officials of Deardorff-Jackson or San Clemente.

Tom Tanaka, a supervisor for Highland Ranch, is ranch supervisor for San Clemente. When San Clemente took possession of the property, it hired a former Highland employee as an irrigator to take care of the already planted cabbage crop. David Omote is employed by San Clemente as their packing house foreman. He was employed in the same capacity by Highland. Guadalupe Velasquez and II Antonio Bedolla who were crew foremen at Highland are employed in the same capacity at San Clemente.

San Clemente uses the same ranch site office facilities which Highland used. It does not employ the same office personnel as Highland.

By the middle of March, 1978, additional acres had been planted in cabbage and cauliflower, and the Company had started planting tomatoes. Current plans call for an immediate planting of a crop of tomatoes with an additional 100 acres to be planted in June. It is contemplated that approximately 100 acres of celery will be planted in September. San Clemente plans to farm the property to its capacity.

The tomato crop is being grown for the fresh market. The work performed during the growing cycle will be comparable to that performed under Highland's operation. The tomatoes will be hand-harvested and taken to the on-site packing shed for processing and packing. San Clemente will operate the shed with its own employees.

San Clemente's procedures for growing cauliflower are comparable to those followed by Highland, i.e., cultivation, fertilization, irrigation and hand-harvesting. Once harvested, it is thrown into a trailer and taken to the packing shed. As with Highland, the trailer is pulled by a tractor. The equipment being used was acquired from Highland.

San Clemente has invested $2,500.00 to $3,000.00 in modifying the cauliflower packing process by installing a merry-go-round type belt which eliminates the need to remove the cauliflower from the belt when it is fed too fast to the packer. Formerly, it was necessary to throw the excess product into a bin to then replace it at the belt's point of origin.

San Clemente's cabbage growing process is the same as that followed by Highland. There is a difference in the harvesting process in that San Clemente has the cutting crew wind-row the cabbage heads rather than throw them directly into trailers. Another crew throws the cabbage into a trailer. When harvested, the cabbage is taken to the shed for sizing and packing.

San Clemente will not market its products through former Highland customers. It has an exclusive sales contract with Deardorff-Jackson.

During the first week of December San Clemente hired 12 employees. During January, 1978, an additional eight persons were employed, and at the end of February the work force was 49 employees, 46 of whom were previously employed by Highland Ranch. On March 14, 1978, San Clemente began obtaining some of its employees through a labor contractor. By March 25 the work force consisted of 150 employees, 42 of whom were supplied by the contractor and 70 of whom were formerly employed by Highland Ranch.

San Clemente contemplates operating with approximately 70 year-round employees to be selected from among the employees hired directly by San Clemente rather than from among those supplied by the labor contractor. It is anticipated the 70 will be selected from among those currently employed.

San Clemente has no present intention of operating the labor camp.

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IV. The Unfair Labor Practices

A. April 27, 1977--Francisco Ruiz Guzman--Removal From Shed Crew:

Paragraph 21 of the complaint charges Highland Ranch with violating Sections 1153(a)and(c) in removing Ruiz from the shed crew. 4/

From November, 1968, until November, 1977, Francisco Ruiz Guzman was a year-round employee of Highland Ranch. During that period- he worked both at the packing shed and in the fields. Ruiz customarily worked about three hours a day in the fields and the balance of the day in the shed. 5/ His packing shed work consisted of cleaning, sorting and packaging raw product; forming and stacking cartons; loading trucks and general cleaning. While working in the shed his foreman was David Omote.

He was taken off shed work on April 27, 1977 ._6/ When the truck came to take the field workers to the shed that morning, Ruiz got on the truck as usual. Bedolla came up to the truck and told him to get down. Ruiz responded: "It's fine. Everything is for Caesar Chavez." He worked the balance of the day picking tomatoes and was never again assigned to the shed. He was not told why he was not being sent to the shed, nor did he ask. He testified that no one asks questions and that he assumed he knew why.

Although there was no hourly wage differential between field and shed work, overtime was paid for shed work when one worked more than 48 hours per week as opposed to after 60 hours for field work. The Employer's records show that there were several weeks in which sufficient hours were worked to require overtime payments. Ruiz' testimony regarding the circumstances under which overtime was paid was not disputed. Ruiz received 10c per hour above scale irrespective of whether he worked in the field or in the shed. This differential was apparently based upon his length of service. 7/

During the period Ruiz worked in the shed, no one

4/Unless otherwise noted, the paragraph references are to the second amended complaint.

5/Thirteen or 14 other workers in Bedolla's crew also split their work day between the shed and the field. There were about eight people who did the same kind of shed work as Ruiz.

6/The complaint alleged March 24, 1977, as the last day or of shed work. David Omote testified he reviewed the time cards and April 24 was the last day Ruiz did shed work. A General Counsel exhibit prepared from Highland's records shows April 26 as the last day Ruiz worked in the shed. I accept that date and do not credit 27 Omote's testimony on this point.

7/This finding is based upon the testimony of D. Omote.

complained about his work, and he received no warning notices. 8/ Omote admitted he had no problems with Ruiz' work.

Omote testified he reduced his shed crew on April 24 by four or five men, including Ruiz; that the reduction was occasioned by the need for more men in the fields; that those taken out of the shed were doing work which female employees were capable of doing, i.e., trimming cauliflower; and that only women remained trimming cauliflower after April 24. This testimony does not mesh with a summary of the Highland shed workers' time records introduced by the General Counsel. The records indicate April 26 rather than the 24th as the last day Ruiz worked in the shed. Also contrary to Omote's testimony, the records show Ruiz as the only male shed worker who performed no shed work after April 26. Male workers appearing from the records to have substantially less shed experience than Ruiz continued to work in the shed. While there was a substantial decline in the number of shed workers during May and most of June, beginning in late June and continuing through July 10 and August the packing shed work force was at least back to the April 26 level. Ruiz was not returned to work in the shed.

Omote testified that Ruiz was not called back to the shed because he thought Ruiz had slowed down and lost his enthusiasm. Although Omote testified to seeing Ruiz doing field work on repeated occasions in May, June, July and August, he could not recall what work Ruiz was doing on any such occasion.

Ruiz joined the UFW in February, 1977. During the period that he worked in the shed, he distributed buttons arid authorization cards to shed workers and talked to them during break time about joining the Union. About a week before he was moved off shed work, he started wearing a UFW button to work., He was the only shed worker to do so. He testified without contradiction that both Bedolla and D. Omote observed him wearing a button.

During the late spring and summer Ruiz became more active on behalf of the UFW. During the three-week period preceding the representation election, he went daily, along with Galvan, Ramirez, Magana and Perez, to the pre-work gathering place at the water pump and passed out buttons, fliers and authorization cards. The foremen of the crews which gathered there were also usually present and observed the organizational activity.

As the organizational campaign mounted, Ruiz and Francisco Perez constituted a team which visited other crews during lunch period to engage in activities for the UFW. The crew foreman was customarily present having lunch with the workers. Additionally, Ruiz wore a distinctive jacket identifying him as a UFW supporter, a jacket bearing the UFW emblem on the back and the legend "Up with Chavez"; he served as an election observer and was involved in the events of that day; and in August he asked for, and received, permission to take time off to be a delegate to the UFW convention.

8/ Based Upon Ruiz' testimony.

In sum, Ruiz was one of the more vocal and active workers involved in the organizational campaign. 9/

Discussion And Conclusions: Discriminatory interference with or modification of the working conditions of an employee with the object of discouraging union membership violates Section 1153(c). When illicitly motivated, modification of an employee's work situation by removing him from a position in which it is possible to 'earn overtime violates Section 1153(c).10/

Ruiz was one of the leaders in the UFW organizational campaign at Highland. Highland's supervisors were admittedly aware of his activities. The record established that Ruiz' removal from and non-reinstatement to the shed crew were discriminatory acts. His work was satisfactory. Other workers with less shed experience continued in the shed after his removal. He was given no explanation for the removal, and the removal occurred shortly after the shed foreman became aware of his Union activities. 11/ The General Counsel made a prima facie case that Ruiz' removal from the shed violated the Act. Thus, the burden shifted to Highland to provide an explanation for its treatment of Ruiz. The explanation offered is that the work which he was doing could be performed by women and others from the shed crew. This explanation does not wash. Highland's records contradict Omote's testimony that no male workers remained in the shed crew after Ruiz' removal. Since Omote admittedly had no problems with Ruiz' work, and since his reason for removing Ruiz from the crew cannot be credited, and in the absence of any other reason for the removal, Respondent has not rebutted the General Counsel's prima facie case. It follows that Respondent Highland violated Sections 1153(a) and (c) on April 27 in removing Ruiz from the shed crew.

Omote's explanation for not returning him to the crew when it expanded in late June was that his periodic observation of Ruiz' work performance in the fields led him to believe that Ruiz had slowed down. I do not credit this explanation. Omote had no recollection of the kind of work he observed Ruiz doing; nor did Bedolla corroborate his testimony that Bedolla told him that Ruiz had slowed down. Finally, Omote testified that his observation of Ruiz' field work occurred over 10-minute periods, a time period unlikely to give any accurate basis for a "slowing down" evaluation. Coupling Omote's inaccurate recollection of the events surrounding Ruiz' removal from the shed crew with his lack of recollection regarding the nature of Ruiz' field work, and the lack of corroboration of a portion of his testimony by a purportedly percipient witness, I decline to credit Omote's testimony as to why Ruiz was not returned to the shed crew. Therefore I find that the failure to so

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9/These findings based upon Ruiz' undisputed testimony.

10/ Star Manufacturing Co., Division of Star Forge, Inc., 220 NLRB 532 (1975).

11/ Sterling Aluminum Company v. N.L.R.B., 391 F.2d 713, 721 (8th Cir. 1968).

return him was a violation of Sections 1153(a) and (c) of the Act.

B. June And July--Threats By Guadalupe Velasquez:

Paragraphs 23 and 24 of the second amended complaint allege that during the months of June and July, 1977, Guadalupe Velasquez threatened agricultural employees, and particularly Salvador Ramirez, with problems if they continued to engage in activities in support of the UFW. No evidence was offered to support these allegations; therefore I shall recommend that Paragraphs 23 and 24 of the second amended complaint be dismissed.

C. June 1, 1977--Change In Employee Benefits And Work Rules:

On June 1, 1977, Respondent Highland issued all employees an Employee Handbook. The book sets forth fringe benefits not previously enjoyed by the employees, and for the first time establishes a grievance procedure, written work rules and a seniority system to be applied in matters concerning layoffs, recalls and the filling of job vacancies.

Respondent's President, Tsuma, testified he was aware of the UFW organizing campaign among Highland employees at the time the booklet was issued. He offered no explanation of the Company's action.

Subsequent to issuance of the Handbook, written Worker Notices were issued employees for conduct deemed violative of its rules of conduct provisions. Respondent relied upon the discipline provisions of the Handbook in effecting certain of the discharges involved herein.

Discussion And Conclusions: The complaint contains no specific allegation that the issuance of the Handbook violated Section 1153(a). With the exception of a question as to whether Mr. Tsuma was aware of the organizing campaign at the time the Handbook was issued, Respondent did not object to the testimony elicited from Tsuma regarding the change in benefits and working conditions effected by its issuance and the fact of its issuance.

The absence of a specific allegation in the complaint does not preclude a finding that conduct proved during the course of the hearing constituted a separate violation of the Act. Sunnyside Nurseries, Inc., 3 ALRB No. 42(1977); Anderson Farms, 3 ALRB No. 67, p. 10 (1977). The issue was fully litigated; the basic facts were presented by Highland's President without objection. Therefore, it is appropriate to determine whether this conduct violated Section 1153(a).

The granting of fringe benefits and beneficial changes in working conditions during the course of an organization campaign and particularly at a time when the campaign is being intensely carried on, when done with the intention of inducing the employees to forego supporting the union, is a coercive exercise of

the employer's economic leverage which interferes with protected employee rights and is, thus, violative of Section 1153(a). N.L.R.B. v. Exchange Parts, 375 U.S. 405(1964). It is immaterial whether the benefits are put into effect unconditionally and on a permanent basis. The absence of conditions or express threats does not remove the employee inference that the, source of benefits conferred is the source of future benefits. N.L.R.B. v. Exchange Parts, supra.

Similarly, the promulgation of work rules during the course of an organizational campaign, without apparent reason, constitutes an unlawful means of retaliating against an employee's protected activity. Unimasco, Inc., 197 NLRB 400, 402-03; Hemet Wholesale, 3 ALRB No. 47 (1977).

Respondent Highland was admittedly aware of the organizational campaign at the time it issued the Employee Booklet. No explanation was offered for improving benefits and wording conditions or instituting a system of work rules in the face of the UFW campaign. This lack of explanation coupled with other evidence of the Employer's animus toward the UFW permits the inference that the specific intent required by Exchange Parts regarding the granting of benefits was present. Similarly, the unexplained adoption of work rules and a disciplinary system during the course of the UFW campaign permits the inference that the Employer's action could reasonably be expected to have the effect of interfering with, restraining or coercing employees in the exercise of their Section 1152 rights. I make both inferences and find that Respondent Highland's issuance of the Employee Handbook on June 1, 1977, violated Section 1153(a).

D. July, 1977--Failure To Assign Salvador Ramirez To Harvest Tractor Driving:

Paragraph 2 of the complaint charges Respondent Highland with violating Sections 1153(a) and (c) of the Act by failing to give Ramirez work as a harvest tractor driver. 12/

Salvador Ramirez was first employed by Highland in March, 1975. Shortly after starting to work, he was assigned to drive a rubber-tired Ford tractor in the cauliflower harvest. The work consisted of pulling a trailer down the rows of cauliflower as field workers deposited cut cauliflower in the trailer. He performed this work until the end of May and was then assigned to picking and spraying tomatoes.

From about July 1, 1975, until the end of September he drove a tractor in the corn harvest. The work was similar to that he had performed in the cauliflower harvest. Workers throw harvested corn into the trailer as it is pulled along by the tractor. When the corn harvest was finished, Ramirez worked in the

12/The complaint alleges the refusal occurred in June. The evidence establishes July as the correct month.

tomatoes until about the middle of January, 1976. His pay rate was the same whether he was doing field work or tractor driving.

In January, 1976, Ramirez was again assigned to tractor driving during the cauliflower and corn harvests. He also drove during the cabbage harvest. He worked in tomatoes from the middle of September until the end of 1976. Starting in February,1976. Ramirez received 10£ per hour more for tractor driving than for field work.

Shortly before January, 1977, Ramirez returned to tractor work in the cauliflower harvest. He drove tractor until the end of the harvest during the week of May 21; he was then assigned to harvesting tomatoes. He was not returned to driving harvest tractor when the corn harvest began in July. He continued to work in tomatoes until he was terminated on November 1, 1977.

On the day that Ramirez started wearing a UFW button at work, in March, 1977, Rodriguez noticed it and. commented to Ramirez that he must have shaved and bathed to put it on. 13/. The button also came to the attention of Velasquez who suggested he would get into trouble for wearing it.14/

During the last part of May, Pasqual Aquino Velasquez asked Guadalupe Velasquez why Ramirez was not driving tractor any longer. Velasquez replied that he had been taken off because he was a Chavista. 15/

Margarito Muniz Espinosa testified that early in May 1977. he had a conversation with Isaac Rodriguez during which Rodriguez told him that the Company was going to fire Ramirez off the tractor for being a Chavista. This was the only conversation which Espinosa ever had with Rodriguez.16/

13/Rodriguez did not deny this statement during his testimony. Ramirez joined the UFW in 1975, but did not become active until 1977.

14/Although he admitted frequent conversations with Ramirez, Velasquez denied ever having a conversation with him dealing exclusively with Union matters. Velasquez also denied talking to any worker about his Union activities. While testifying, Velasquez failed to respond candidly to many questions. For this reason, as well as the unlikelihood that, in view of the general atmosphere at Highland Ranch, he had no conversation with workers about their Union activities, I do not credit Velasquez' denials regarding conversations about Union activities.

15/Guadalupe Velasquez testified but offered no testimony controverting that of Aquino. I credit Aquino's testimony.

16/Although Rodriguez testified, he did not controvert Muniz ' testimony.

In each of the first two seasons during which Ramirez drove tractor, he broke a trailer tongue by making too sharp a turn at the end of a row. Velasquez had occasion to warn him during those first two seasons to be careful not to drive over the rows of cauliflower. Ramirez received no warnings during the 1977 season, nor did he break a trailer tongue during the 1977 season.17/

Discussion And Conclusions: The failure to place Ramirez on a harvest tractor during the corn harvest violates the Act if the General Counsel has proved by a preponderance of the evidence that Respondent's motive was to punish Ramirez for his Union activities, thereby discouraging membership in the UFW.

By the end of June, Ramirez' activities on behalf or the UFW were abundantly clear to Highland. He was one of the UFW employee cadre vigorously engaged in organizing Highland employees. Since harvest tractor driving paid more than the regular field work, it was a discriminatory act to assign another employee (Cavello) having less experience to work on a harvest tractor. It was work to which Ramirez had regularly been assigned during his tenure of employment.

Highland gave Ramirez no explanation for not returning him to the harvest tractor. During the course of the hearing two distinct reasons were tendered to explain the Respondent's action. Tanaka testified that by the time the cauliflower crop was finished, Cavello was already assigned to a corn harvest tractor and there was no room for Ramirez. The summary of the Company records regarding the employment status of Ramirez and Cavello during the appropriate time frame impeaches Tanaka on this point. The records show that Ramirez finished cauliflower during the week of May 21 and that Cavello did not start on the corn harvest until the week of July 2. Obviously, this reason asserted by Tanaka for not assigning Ramirez to tractor work cannot be accepted.

Some attempt was made to establish that the Respondent acted as it did because Ramirez had broken trailer tongues and run over portions of the crop rows. Tanaka testified that he had observed such acts during the 1977 season; his testimony was contradicted by the crew foreman, Velasquez, who testified to such occurrences in earlier years, but not in 1977. I do not credit Tanaka' s testimony on this matter. Velasquez spent more time with

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17/This finding is based upon the testimony of Velasquez, his foreman. Contrary to Velasquez, Respondent's witness Tanaka testified he observed Ramirez both breaking tongues and driving over rows in 1977. I do not credit Tanaka. His recollection is unreliable. He testified that another tractor driver, Cavello, was driving tractor in the corn at the time Ramirez finished, cauliflower. However, the work records show an hiatus in tractor driving of approximately six weeks between the completion of tractor driving in cauliflower and commencement of tractor driving in corn. This is corroborated by testimony regarding the harvesting of the two crops. A fact which one would expect Tanaka to remember.

his crew than did Tanaka and thus would have had greater opportunity to observe. Ramirez' work. Certainly had he observed Ramirez running over rows or breaking equipment during the 1977 cauliflower season, he would have so testified.

Finally, Velasquez and Tanaka each opined that Cavello was the better tractor driver, and that it was for this reason that Cavello was selected. There are no facts put forth as the basis of the opinion of either witness. With respect to Tanaka, his impeachment and manifestation of bias in the formulation of the other reasons he put forth as explanations for Respondent's conduct leads me to discount his opinion of the relative worth of Ramirez and Cavello. Given the atmosphere in late June and early July at the Highland premises, I cannot infer that Velasquez' evaluation of the two drivers, unsupported by fact in the record, is uncolored by the Employer's animus toward the UFW.

Therefore, I conclude that the reasons put forth by Respondent Highland for not returning Ramirez to a position as harvest tractor driver are pretextual. The General Counsel has proved by a preponderance of the evidence that Respondent violated Sections 1153 (a) and (c) when it failed to make Ramirez a harvest tractor driver at the outset of the 1977 corn harvest.

E. July 28, 1977--Election Day Conduct:

The complaint alleges that on July 28, 1977, the date of the representation election among Highland employees, Respondent Highland violated Section 1153(a) in restraining farm workers in their employ from exercising their right to vote in the representation election by denying access to ALRB agents conducting the election; by evicting from the Highland Ranch premises, in the presence of farm workers, ALRB agents who were holding an ALRB election; and by arresting, in the presence of farm workers, ALRB agents engaged in the conduct of the representation election.18/

Respondent Highland Ranch initially denied these allegations; however, during the course of the hearing, it sought, and was granted, permission to amend its answer to admit the charging allegations. 19/

Respondent Highland was advised by letter from counsel dated July 27 that the Marine Corps would grant an accredited state agency access up to the boundary of the leasehold property and that permission to pass over the leasehold property was

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18/Paragraphs 38, 39 and 40.

19/The allegations as set forth in the pleadings contained the names of certain persons alleged to be agents of Highland who performed the charged acts. In conjunction with its amendment of its answer, Highland moved to strike the listed names from the second amended complaint. This motion was granted, over the objection of the General Counsel, on the ground the names were surplusage.

left to the leaseholder. The letter also stated that the State had no jurisdiction over Federal land, and set forth legal arguments which counsel suggested could be made challenging the validity of the forthcoming ALRB election; he also recommended that entry should be refused to avoid waiving Highland's legal position. He recommended peaceful refusal without force. This opinion and advice were based upon his conversation with, a Marine Corps officer. The letter contained the following caveat: "However, you are cautioned that the matter is not black and white, but very grey."

There is nothing in the record to indicate that any attempt was made to obtain a temporary restraining order to halt the election process. There is some evidence that there were discussions between Highland's lawyers and ALRB representatives and that agreement was reached that the election could be held on the premises.

Discussion And Conclusions: While admitting that it engaged in conduct which restrained employees in the exercise of rights guaranteed them under Labor Code Section 1152, Respondent asserts that its conduct did not violate Section 1153(a) because the General Counsel failed to prove by a preponderance of the evidence that the conduct was motivated by anti-Union animus.

This contention is without merit. The ALRB, relying upon applicable NLRB decisions, does not inquire into the motives of the respondent in assessing whether or not its conduct violates Section 1153(a). 20/

Highland Ranch urges its good faith doubt as to the jurisdiction of the ALRB on Federal land as d defense to its conduct of July 28. This defense is unavailable. The Board, in Jackson & Perkins, supra, rejected good faith as a defense when urged in response to charged violations of the access regulation. 21/ Certainly rejection of such a defense is even more appropriate when an employer engages in threats of violence and the arrest of ALRB personnel in an attempt to frustrate the Act's representation processes. Respondent Highland's admitted election day acts are simply inconsistent with any contention that the bizarre conduct was predicated by a doubt as to ALRB jurisdiction.

It follows that Respondent Highland Ranch, as alleged in the complaint at Paragraphs 38, 39 and 40, interfered with and restrained employees in the exercise of rights granted them by Section 1152 of the Act, thereby violating Section 1153(a).

20/ American Freightways Company, 124 NLRB No. 1 (1958); N.L.R.B. v. Burnup and Sims. Inc., 379 U.S. 21 (1964), cited with approval and followed in Jackson & Perkins Company, 3 ALRB No. 36, at p. 2, Slip Opinion (1977).

21/ 8 Cal. Admin. C. Section 20900.

F. August 9, 1977--Francisco Perez Navarro--Discharge:

Perez first worked for Highland Ranch in 1975 as a general field worker. He quit work in October and was rehired in February, 1976. Perez quit again in April, 1976, and returned to work about the first week in May. He worked until the end of August when he again left work, telling Tosh Omote that he would be gone for a month. The day prior to his return he spoke to Tanaka by phone, telling him he would be back the next day. Tanaka said OK, and Perez returned and worked until the end of November when he quit. 22/ He was rehired by Omote in March, 1977, and worked until August.

On August 4, 1977, Perez asked Tosh Omote for permission to be absent for two days (Thursday and Friday) because of personal problems. He said he would return on Sunday. Omote granted the request. Nothing was said about being disciplined if he did not return at the agreed upon time. 23/ Omote testified that Perez wanted time off to visit a sick relative in Mexicali. Jose Ortiz was present and also wanted time off. 24/ They were going together because Ortiz did not have a driver's license. Omote told them to be sure to return on Sunday, and both promised to do so. Tsuma came by and asked what was going on. When Omote told him, Tsuma said to let them go. 25/

Two days were not enough to dispose of Perez' problems, so he did not report for work Sunday or Monday. 26/ He did not call in until Monday afternoon when he told Omote it had been impossible to return to work on Sunday, but that he would be back the next morning. 27/ Omote reminded Perez that he had said he would return Sunday. Perez repeated that he was unable to do so, but that he would return the next day at 7:00 a.m. Tosh responded that he did not need Perez any more. 28/

22/These findings are based upon the testimony of Perez.

23/Omote did not contradict this portion of Perez' testimony

24/ never returned to work.

25/ I credit Omote's version of the conversation. In view of Perez' inability to recall even where he spent the time he was , off work, I find it unlikely he would remember the specifics of his conversation with Omote.

26/Saturday was not a work day.

27/The witness knew on Saturday that he might be unable to return to work on Sunday, but did not call in.

28/Perez testified that Tosh said "we'll see." This testimony is inconsistent with his declaration under penalty of perjury, in which he stated that "Toshio told me he did not need me any more because I had not come back on the agreed—(continued)

Perez reported for work the next morning at 7:00 a.m. accompanied by Francisco Ruiz. He spoke with Tosh, Toby Tsuma and Tom Tanaka. Tosh told him he had promised to return Sunday, but since he had not returned either Sunday or Monday, he would have to fire him. 29/ No one else said anything. Tosh got in his car and departed. Perez had, on prior occasions, not returned to work as promised and on some occasions had an unspecified time when he was due to return. He was always put to work when he returned. There was work available for Perez the morning of his return. Omote testified a warning notice was prepared on Perez when he failed to show for work on Sunday; this testimony was impeached by the introduction of the notice, which was dated Monday, August 8, 1977, and signed by Omote. The notice indicated that Perez was discharged on August 8, 1977.

Perez joined the UFW in April, 1977. Thereafter he engaged in a variety of Union activities. In conjunction with Galvan, Ramirez, and Ruiz, he prepared and distributed UFW fliers in the labor camp on the Ranch, and in the fields before work, during the breaks and lunch time, and after work. Perez obtained signed authorization cards, spoke to workers during break time with a bullhorn and carried a UFW flag at the water pump pre-work gathering place. 30/ During the three weeks preceding the election, these activities occurred daily. When Perez and the others spoke over the bullhorn at the pre-work assembly point for nonresident workers, Highland Ranch foremen were always present at distances varying from three to 12 meters. 31/

Perez also made daily visits with others to various Highland crews during their lunch breaks. The bullhorn was used to speak to the workers about the UFW arid to urge them to sign cards. The crew foremen were generally present. 32/

28/(continued)--day." In view of the prior inconsistent statement, I do not credit the witness' testimony about his telephone conversation with Tosh. I find that Perez' declaration reflects what Tosh said.

29/This finding is based upon Omote's testimony. Perez testified that Omote and Tsuma merely kept reiterating "no more work." Omote's testimony regarding the events of the morning is consistent with his credited testimony regarding his telephone conversation with Perez. This consistency provides a basis for crediting Omote's testimony about the Tuesday morning conversation.

30/Thomas Tanaka, Hernandez, Prieto, Robles, Guadalupe Velasquez and Antonio Bedolla saw Perez with the flag.

31/Prieto, Hernandez, Robles and Reyes were each present on some occasions when the bullhorn was used. Perez used the bullhorn on two or three occasions.

32/Perez visited the crews of Margarito Robles, Telefaro Hernandez, Raul Reyes and Julian Prieto.

Perez began wearing a UFW button toward the end of April, 1977, and wore one at work continually thereafter. The first day he wore a button at work, Tosh Omote saw it and asked him if he belonged to the Union. Bedolla and Rodriguez were also present.

Perez was a UFW observer at the representation election held on July 28, 1977, and was among those who were arrested on election day.

Discussion And Conclusions: Respondent's defense is that Perez was discharged for cause,i.e., willful absence from work without permission.

As Respondent notes, it is well established that an employer does not lose the right to discharge for cause an employee engaged in union activity .33/ If the rule were otherwise, a discharge would be violative of Section 1153(c) upon proof of employer knowledge of the discriminatee's union activity. The contention that an employee was discharged for misconduct merely throws another element into the mix from which one makes the inferences of motive for the discharge. Substantial misconduct on the part of an employee tends to dilute the possibility of malting an inference that he was discriminatorily discharged; substantial independent 1153(a) employer conduct tends to dilute the likelihood of inferring that cause was the motivation for discharging a known union activist.

The evidence herein clearly establishes Employer knowledge of the Union activity of Perez and there is little dispute regarding the operative facts leading to the termination. Perez asked for and was given, a two-day leave of absence. He was told to report back on Sunday; he did not report back until the following Tuesday. He failed to contact his employer prior to Monday afternoon; thus, he had no permission to be absent on Sunday and Monday.

The General Counsel argues that 'the Respondent's discriminatory motivation is manifested in the fact that in other years Perez had obtained leaves of absence, failed to return at the stated time, and nonetheless been* put to work. This argument over-looks Perez' testimony that on each of the earlier occasions when he left work, he quit. I make no adverse inference from the difference in treatment accorded Perez in August, 1977, upon his return to work vis-a-vis 1975 and 1976 when he returned to work. Similarly, I draw no adverse inference from the fact the Employer noted that Ortiz who went on leave with Perez was listed as a "quit" rather than fired. Ortiz did not return to go to work.

As noted above, I have found the promulgation of written work rules on June 1 to be violative of Section 1153(a).

33/Citing N.L.R.B. v. Lowell Sun Publishing Company, 320 F.2d 835 (1st Cir. 1963).

Reliance upon those rules to support Perez' discharge permits an inference that the motive for the discharge was interdicted. 34/ The disparate contemporaneous application of the rules as between Francisco Perez and Ezequiel Perez is an independent factor which permits an inference the discharge was unlawful. Ezequiel was absent without notice for three days and received only a Workers Notice. No explanation was offered for the difference in treatment.

Assuming absence without notice warrants some kind of discipline, the imposition of discharge is not commensurate with the offense especially in view of the need for his services that day, a factor which also permits the inference the act was illegally motivated.

> While it is well established that an employer may lawfully discharge an employee for any reason, howsoever unjustifiable, as long as it is not discriminatory, nevertheless, the lack of merit in the reason advanced for the discharge may be considered in determining whether or not a discriminatory motive existed.
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> Unimasco, Inc., 196 NLRB 400, 404 (1972).

Finally, the discharge occurred 11 days after the bizarre events of election day, events in which Perez took an active part on behalf of the UFW.

Even in the face of a lawful reason to discharge an employee, the discharge violates the Act if it is partially motivated by the employee's union activity. 35/

Making all the permissible inferences recited above, I conclude that the discharge of Perez was at least partially motivated by his extensive Union activity. Therefore, I find the discharge violated Sections 1153(a) and (c) of the Act.

G. August 24, 1977--Salvador Guzman Ortiz--Discharge:

Paragraph 53 of the complaint alleges that Respondent Highland violated Sections 1153(a) and (c) of the Act by discriminatorily discharging Salvador Guzman Ortiz on August 24, 1972.

Guzman first worked for Highland Ranch in February, 1977. He was hired as a general field worker and worked in Raul Reyes' crew until his discharge on August 24, 1977. During his

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34/ See Hemet Wholesale, 3 ALRB No. 47, p. 25 (1977).

35/ Princeton Inn Company, 424 F.2d 264 (3rd Cir. 1970); N.L.R.B. v. Linda Jo Shoe Co., 307 F.2d 355, 357 (5th Cir. 1962).

period of employment, Guzman lived in a Highland labor camp in Huntington Beach called Camp Lemon. He rode the Ranch's bus to and from work. Isaac Rodriguez drove the bus.

Guzman joined the United Farm Workers in April, 1977. After becoming a member, he wore a UFW button to work each day.

One evening in early August while riding home from work, Rodriguez told the workers they were a bunch of dummies, that they did not know what they were doing when they believed everything Galvan and Ramirez told them. Guzman replied that they were grown up enough to know whether or not to vote for the Union or the boss. Guzman was the only one to respond to Rodriguez' statements. 36/ On August 15, while the crew was eating lunch, Rodriguez and Guzman got involved in a verbal exchange regarding whether the UFW could come onto the premises. At the conclusion of their conversation, Rodriguez said he would make Guzman's food bad for him. 37/

August 8, 1977: On August 8 Guzman and Gregorio Villa Ortega were working in Reyes' crew weeding cucumbers. Sometime prior to 10:30 Reyes checked the crew and commented on the rate at which Guzman and the others were working. About 10:30 Rodriguez approached and spoke to Guzman and six other members of the crew who were working somewhat behind the balance of the crew. There is a substantial conflict in the testimony regarding what occurred. Guzman testified that Rodriguez approached and asked why they were behind the other workers. Guzman responded that the rows in which they were working had more weeds. He suggested that Rodriguez come in and examine the rows. Rodriguez declined, saying that it was not his job. Another crew member, Villa, testified that he told Rodriguez that it was not the same to do work as to order people to do it.

Rodriguez' version of the encounter is as follows: On direct examination, he testified he watched the crew for about an hour before he spoke to them; that he spoke to them because they were carrying on a general conversation among themselves and were half the distance of the field behind the rest of the crew. He told the group they were working so slow they were stumbling over their own feet. Guzman responded, saying the days of slavery were over, that he was not working piece work, he was working hourly. He told Rodriguez to grab a hoe if he thought he (Guzman) was not working fast enough. He told Rodriguez to fire him if he did not like his work. Rodriguez said he did not want to fire him, he just

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36/These findings are based upon the uncontradicted testimony of Guzman. Rodriguez did not testify with respect to such an incident.

37/During August, Guzman received three Worker Notices. The first was on August 7 for having been absent without notice. It is admitted that such was the case. He received a second notice on August 8 and a third notice on August 24.

wanted him to work with the rest of the crew. Villa told Rodriguez that he was not working piece work, that he was not a slave and was working as fast as he cared to work. Rodriguez told him that he wished he would catch up with the rest of the crew.

After speaking to the group Rodriguez went to the camp office and prepared Worker Notices fox both Guzman and Villa. He gave these to Reyes who in turn gave them to the workers. The Guzman notice stated in substance that Guzman started to argue because he was behind the rest of the crew and that he was told to catch up with the crew. The notice stated that he could do the work but did not want to. It was noted as a first warning.

The Villa notice stated that he had fallen behind the rest of the crew, and when he was told to catch up, he started to argue with arid threatened the supervisor. As with Guzman, the notice contained the notation that he could do the work but did not want to. I do not credit much of the Rodriguez testimony regarding this interchange on August 8.

According to Rodriguez, his normal work pattern involved going around to all the crews at the start of the day to see whether they had the materials they needed for the day's work, to see whether the foremen had any questions and to see that everybody was situated in their different jobs. The initial rounds would take him more than an hour and these functions were carried on throughout the day. This testimony elicited on cross-examination is inconsistent with his testimony on direct that what motivated him to speak to the group was the fact that he had been watching them for an hour "consecutively" before speaking to them. Moreover, although Rodriguez had purportedly been watching the group, Guzman among them, for an hour, he testified that he had not seen Guzman between the time they rode to work together on the Huntington Beach bus and the time he spoke to the lagging workers at 10:30. Considered together this testimony makes it unlikely that Rodriguez conducted the claimed surveillance over the group prior to speaking to the workers on the morning of the 8th. I conclude that this testimony is unreasonable, and this conclusion is one reason why Rodriguez' testimony regarding what was said that morning is credited only to the limited extent noted below. 38/

On direct examination Rodriguez recited in some detail remarks made to him by Villa the morning of the 8th. On cross-examination he could not remember anything which Villa said. Similarly, when questioned on cross-examination regarding what Guzman said, he recalled only that Guzman said the days of slavery were over and that they were working on an hourly rather than a piece rate. Rodriguez' failure to recall on cross-examination facts to which he testified positively on direct examination is properly considered in assessing his credibility. 39/

38/ See Nichols v. Pacific E.R. Co., 178 C. 630.

39/31 Cal.Jur.3d 895, 896.

Crew foreman Reyes who observed Rodriguez speaking to the lagging group testified they were 50 to 60 feet behind the balance of the crew. He stated that it was not unusual for some workers to be 40-50 feet behind the others. This testimony conflicts with Rodriguez' testimony that Guzman and the laggers were 100 to 125 feet behind the balance of the crew. The failure of Reyes to corroborate Rodriguez on the degree of lag is further reason not to credit Rodriguez. Reyes was, at: the time he testified, employed as a foreman by Respondent San Clemente. Since his interests lie with Respondents, it is reasonable to assume he would have corroborated Rodriguez had he been able to do so. By not doing so, his testimony was adverse to the interests of Respondents and is, therefore, especially entitled to be credited. See Georgia Rug. 131 NLRB 1304, fn. 2.

On the other hand, notwithstanding Rodriguez' demonstrated hostility to the UFW and its adherents, I find it unlikely that worker notices would have been issued on August 8 if Guzman and Villa said no more to Rodriguez than each claims was said. Thus, it seems most likely that Guzman did comment about the days of slavery being over and did remind Rodriguez that he was working at an hourly rate rather than a piece rate. I so find, and to this extent credit Rodriguez, noting that this testimony was elicited on cross-examination.

Resolution of the conflict regarding Villa's statements the morning of the 8th is less crucial. Rodriguez' failure to recall on cross-examination anything which Villa said leads me to discredit completely this portion of his direct testimony. It seems likely that Villa received his worker notice because he responded to Rodriguez as he said and was, by that act, associated in Rodriguez' mind with Guzman.

Reyes testified credibly that August 8 was the second day that his crew weeded cucumbers. The crew started their rows where they had finished the previous day. Guzman and the others to whom Rodriguez spoke started the day 40 to 50 feet behind the balance of the crew. They ended the day 40 to 50 feet behind.

August 24, 1977: Guzman was discharged on August 24. About 10:30 that morning Rodriguez came into the cucumber field and spoke to Guzman and the group working with him. According to Guzman, Rodriguez told them they were putting the noose around their necks. Rodriguez told Ramon Garcia he had been given work out of pity, and told de la Torre he was falling down. 40/ Guzman was the only worker who responded, saying that the times were over when the employer could bring in workers and fire those who would not hurry, put them on a bus and give them their checks. 41/

40/Villa corroborated Guzman's testimony regarding the events of the morning.

41/Garcia and de la Torre were other crew members.

Testifying about the same conversation, on direct examination, Rodriguez stated that he told the group, including Guzman, they were far behind the balance of the crew and asked them whether they could not catch up; that Guzman responded by saying: "I'm not a slave. I'm not working piece work. I'm working hourly rate. If you don't like it fire me." On cross-examination Rodriguez testified the substance of his conversation was as follows: you fellows are working so slow you're falling over your own feet. I wish one of you'd get off a ways and watch, you'd see what I mean. Guzman was the only one who responded, saying the days of slavery are over, I'm not working piece work, this is on an hourly rate. If you don't like my work, fire me. 42/ The conversation ended with Rodriguez saying that he did not want to fire him, he just wanted him to work with the crew. Rodriguez then went to his pickup to prepare a worker notice which stated:

> Insubordination--instigating a slow-down. Defiant of supervision. Plainly he does not want to work. He will not obey orders to the point of asking to be fired.

Rodriguez gave the notice to Reyes who gave it to Guzman. The notice did not indicate that Guzman was discharged.

As Guzman was getting on the bus to go home that afternoon, Rodriguez handed him two checks and told him they did not need him any more, Rodriguez testified that Guzman responded: "This is what I've been wanting." Guzman denied making this statement. There is no testimony, regarding who made the determination that Guzman was to be fired.

Discussion And Conclusions: Although Guzman was not so active on behalf of the UFW as some other Highland employees, he did manifest support for the Union in the presence of Highland supervisors, particularly Rodriguez, sufficiently to establish Employer knowledge of such activities. He wore a UFW button to work daily for approximately four months prior to his termination; on two occasions during the month of August, he responded, in the presence of other workers, to anti-UFW statements made by Rodriguez, and on each occasion was the only worker to so respond. A discriminatee does not have to be "very" active in union affairs before employer knowledge of his activities may be inferred. As-H-Ne Farms. 3 ALRB No. 53 (1977).

Coupling the evidence of "Employer knowledge" with Respondent's demonstrated animus toward the UFW, the General Counsel made a prima facie case for finding Guzman's discharge violative of Section 1153(c). It remains to determine whether Respondent Highland has carried the burden of establishing discharge for cause.

There is no basis in the record for the statement on

42/Guzman denied this statement.

the August 24 notice that Guzman instigated a slow-down. The assignment of an unfounded reason for issuing the notice taints it. The worker notice did not state that Guzman was discharged nor was he so notified until the end of the day. The failure to terminate Guzman until the close of work is susceptible of the inference that the real reason was other than his interaction with Rodriguez that morning. The general hostility of Respondent to the UFW and its adherents permits the inference Guzman was terminated because of his support of the UFW.

During August, Guzman, other than the occasions on which he received "Worker Notices," had two encounters with Rodriguez regarding the Union. On both occasions Guzman stood out from the crowd as one who responded to Rodriguez' anti-Union remarks. In early August he spoke up on the bus when Rodriguez referred to the workers as dummies for listening to Galvan and Ramirez. On the 8th he received a notice for insubordination. During the lunch break on August 15 Guzman had an interchange with Rodriguez about Union access. On the 24th he was terminated. The timing of the notices vis-a-vis the encounters suggests they were retaliatory.

So far as poor work is assigned as a cause for issuance of the worker notices, it appears that Guzman received disparate treatment. With the exception of Villa's notice on August 8, none of the employees lagging behind the crew was cited for poor work, notwithstanding the fact that some were also laggards on both occasions.

This unequal treatment of Guzman supports the conclusion that the motive for issuing him worker notices was to permit reliance on the recently formulated rule calling for discharge for three violations of Company rules. 43/ Credited testimony does not indicate a difference in work performance as between Guzman and the others with him after Rodriguez addressed them on either the 8th or the 24th.

While it is clearly appropriate for a supervisor to urge employees to work faster and produce more, Rodriguez' manner and speech in so doing could reasonably have been calculated to arouse an impertinent response, especially in Guzman, whom Rodriguez knew as prone to retort to what he regarded as anti-worker statements. When considered together with the Respondent's pervasive Section 1153(a) conduct, I conclude that Rodriguez' conduct was aimed at triggering an insolent or insubordinate response from Guzman and when such response came forth, it was used as a pretext to terminate him. 44/ I conclude that Guzman would not have been terminated but for his manifested support of the UFW; therefore, I find that his discharge violated Labor Code Sections 1153(a)

43/ Gillette's The Country Place, 226 NLRB 819 (1976).

44/ Cf. Trojan Battery Company, 207 NLRB 425 (1973); IPM Corporation, 713 NLRB 189 (1974).

and (c).45/

H. September 2, 1977--Bartolo Prado Navarro--Refused Emergency Leave:

Bartolo Prado Navarro (customarily known as Navarro) was first employed as a year-round worker for Respondent Highland in 1968. He lived in the San Mateo labor camp on the Ranch during the three years preceding the hearing.

Navarro joined the UFW in early 1977. His Union activity was limited to wearing a UFW button at work. His testimony was contradictory with respect to whether or not he had worn the button to work prior to the date he sought a leave of absence.

On September 2, 1977, about 1:00 p.m. Navarro asked Omote for a leave of absence to go to Mexico for a couple of weeks because one of his daughters needed an operation. Omote refused the request. He told Navarro that he would have to voluntarily terminate him because he did not know when Navarro would return and there might be no work when he did return. Navarro testified credibly that Omote told him to go see Galvan about work. Sometime between 2:00 and 3:00 p.m. on September 2, Omote gave Navarro his paycheck and a notice which stated: "voluntario termino permanente." Navarro went to Mexico for 28 days. He resumed work at Highland when he returned._ 46/ Tsuma testified that Omote said he terminated Navarro because Highland's labor requirements were becoming slower and rather than give him a leave, he terminated him.

Tsuma testified he could not recall whether or not Highland had ever given an employee a leave of absence when his anticipated return date would fall during a slack period.

Sometime after Navarro left for Mexico, Salvador Ramirez and Francisco Ruiz, as UFW committeemen, asked Omote whether there was work for Navarro. Omote said there would be no more work when Navarro returned, because he was not going to plant the "unoccupied" land. Omote places the conversation about the middle of September. Ruiz places it at the end of September or early October. Adopting either date it is apparent that the incident occurred after Navarro had left work. He could not, as Ruiz testified, have been present during the course of the conversation. Nor, in view of that fact, does Ruiz' testimony regarding requesting

45/ S. Kuramura, Inc. 3 ALRB No. 49 (1977).

46/ The worker notice is dated September 2, and both Omote and Navarro place the events as occurring on that date. Navarro testified that Omote gave no reason for denying his requested leave. Omote testified as stated above. I credit Omote's testimony on this point. I find it unlikely that he would nor give Navarro a reason for denying his request. Omote's testimony as to the reasons given Navarro for denying the leave request is consistent with the tenor of the responses subsequently given Ramirez and Ruiz when they interceded on Navarro's behalf.

a permit for Navarro to go to Guadalajara make any sense. It is likely that the conversation related to whether Navarro could return to work. 47/

In late September Navarro filed an unfair labor practice charge against Highland for discriminatorily denying him a leave of absence. When Highland received notice of the charge, it made Navarro an unconditional offer of employment; he returned to work and continued to work until Respondent Highland closed its operation at the beginning of December. 48/

In 1977 it was Company policy to grant emergency leaves. A sick relative could qualify as an emergency. At the time Navarro sought leave the written Company rules provided:

> Depending upon the season, leaves of absence may be granted . . . for a period up to thirty (30) days. You may be granted a leave of absence without pay for annual military duty, medical and personal reasons. If you feel you need a leave of absence, contact your supervisor. Leaves of absence must be in writing signed by your supervisor.

Discussion And Conclusions: Paragraph 25 of the complaint alleges that Respondent Highland violated Section 1153(a) by denying Navarro a leave of absence in September, 1977. In determining whether Respondent's conduct violated Section 1153(a), it i not necessary that specific intent to frustrate Section 1152 employee rights be proved. It suffices to prove that Respondent's act--refusing to grant Navarro leave--could reasonably be expected to frustrate those rights. Dan Tudor & Sons. 3 ALRB No. 69 (1977); Cooper Thermometer Co., 151 NLRB 502, 503 (1965).

No challenge is raised by Respondent Highland to the bona fides of the reason presented by Navarro for seeking a two-week leave of absence. Nor does Respondent deny that its policy regarding emergency leaves would cover granting a leave to care for a sick relative. Respondent defends its refusal to grant Navarro's request on the following grounds: uncertainty as to when he would return and uncertainty as to whether there would be work available. So rather than grant Navarro's request, they forced him to quit in order to visit his sick daughter.

Neither defense withstands scrutiny. Respondent does not deny Navarro said he would be gone two weeks. No explanation is offered regarding why the potential lack of work at the time Navarro was to return required terminating him on September 2. It

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47/These facts are based upon the credited testimony of Omote.

48/Based upon credited testimony of Toby Tsuma. Tsuma testified he received a copy of the charge on September 24 or 25.

may be noted that the work availability prognosis of September 2 proved inaccurate; Navarro was unconditionally offered re-employment upon filing an unfair labor practice charge.

By refusing to grant Navarro his leave, Respondent deprived him of the seniority benefit it had effected June 1. Certainly it was to be expected that Navarro and his fellow workers would construe the Employer's act as a reprisal for having voted so overwhelmingly for the UFW. Moreover, it is reasonable to infer in the absence of any reasonable explanation that reprisal was the motive.

Respondent correctly notes that the record does not clearly establish Employer knowledge of Navarro's Union activities; however, the lack of need to prove specific intent makes lack of knowledge irrelevant. Cooper Thermometer Co. supra.

Highland Ranch violated Section 1153(a) by refusing to grant Bartolo Prado Navarro an emergency leave of absence on September 2, 1977.

I. October 8, 1977--Guadalupe Ruiz and Juan Carranza--Constructive Discharge:

Guadalupe Ruiz was initially employed at Highland Ranch from July until December 22, 1976. He lived in Santa Ana and rode to arid from work with crew foreman Robles until October, 1976, and thereafter with a worker named Corona. He returned to work for Highland from March until May, 1977; he was laid off and returned to work in July and worked until October. During this period he lived in Santa Ana and rode to and from work with a fellow employee named Arturo.

Arturo quit in October. When he told Tsuma that he was quitting, Tsuma asked his riders whether they still wanted to work. When told they did, Tsuma said he would try to get them a ride. This was the only occasion Tsuma talked to Ruiz regarding getting him a ride. 49/ Margarito Robles and Telesfaro Hernandez, Highland crew bosses, each provided workers with transportation from Santa Ana. Ruiz contacted Robles, with whom he had ridden in 1976, to ask for a ride. Robles said he could not give him a ride, because he had no room for him. 50/ Nothing else was said. Ruiz

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49/This finding is based upon Ruiz' testimony on cross-examination.

50/This testimony was elicited on cross-examination. When testifying on direct, Ruiz said that Robles said no ride for you or I won't give you a ride or words to that effect. His testimony on cross I find to be more reliable. Although the witness was confused while testifying, particularly with regard to when he worked for Highland, I find it unlikely he would forger his earlier testimony if it were completely accurate. Nor could he have been confused by the questions on cross-examination as they were leading and a self-serving answer was apparent.

contacted the person who drove Robles' second car and asked for a ride. The driver told him that he had orders from Robles not to give him a ride. 51/ Ruiz had ridden to work in the driver's vehicle in 1976.

Ruiz also sought a ride from crew foreman Hernandez and was told there was no room because Hernandez had given rides to three of the other workers formerly riding with Arturo. 52/ Robles provided a ride to one of the people who had ridden with Arturo. The other three, including Ruiz and Juan Carranza, did not get rides. One of the workers to whom Hernandez gave a ride customarily wore a UFW button to work as did the person to whom Robles gave a ride. Two of the four workers who received rides were UFW observers at the ALRB election.

When Ruiz was unable to get a ride with Robles, he called the Highland office, spoke to Rodriguez and told him that he could not work unless he got a ride. Rodriguez told him there was no room in the bus, which Highland ran from Camp Lemon in Huntington Beach to the Ranch. Had there been room Ruiz could have gotten himself to a position where the bus could have picked him up. Since he was unable to get a ride, Ruiz quit.

Workers living in Santa Ana paid §10.00 per week to the driver with whom they rode to work. The payment received from their passengers was the sole compensation by the transportation providers. The Santa Ana workers who wanted rides made their arrangements directly with the drivers. It was not a requirement of the job that Hernandez and Robles provide transportation to and from Santa Ana. The Huntington Beach transportation was provided by a Highland Ranch bus.

Ruiz has been a member of the UFW for approximately seven years. Starting in November, 1976, Ruiz held Union meetings in his home in Santa Ana. During 1977, the meetings to be held in his house were announced in the fields in the presence of supervisors. Ruiz wore UFW buttons to work during his periods of employment; he distributed buttons; and he served as an election observer for the UFW.

51/This testimony came in without objection. However, in view of its hearsay character, I do not credit the testimony. It is patently self-serving, going to the core issue to be proved if the allegation is to be sustained. In view of the position attributed to Robles in his conversation with Ruiz, I find it unlikely he would have made the remark attributed to him by the driver.

52/This conversation occurred about 6:30 one morning as Hernandez was departing for work. There were some five or six people in the back of the camper or pickup. Robles and Hernandez were the only persons customarily transporting workers from Santa Ana.

Discussion And Conclusions: The complaint, at Paragraph 51, alleges that Respondent Highland violated Section 1153(a) and Section 1153(c) by discriminatorily refusing to provide Ruiz and Juan Carranza transportation to work. Carranza did not testify and there is no evidence in the record regarding his inability to get a ride to work after Arturo quit.

There is ample authority under the National Labor Relations Act that a constructive discharge having the motive of discouraging union membership violates Section 8(a)(3) of the Act. Labor Code Section 1148 mandates applying those precedents to constructive discharges effected by an agricultural employer.

The General Counsel has proved by substantial evidence that Ruiz was an active advocate for the UFW and that there was Employer knowledge of his support of the Union. Before turning to the question of whether Ruiz was discriminated against, it is appropriate to examine the question of whether or not Highland Ranch is responsible for the conduct of Robles and Hernandez in failing to provide Ruiz with transportation to work. Highland argues it has no responsibility for this conduct because providing transportation for workers was an independent activity of each and not within the scope of their authority as supervisors. This argument is without merit.

The ALRB in Whitney Farms, 3 ALRB No. 68 (1977), rejected the "outside the scope of its relationship" defense even in the context of a claim of ignorance of the supervisors' activities. In so doing, the ALRB followed the NLRB principle that the acts of a supervisor may be imputed to an employer even if not authorized or ratified. 53/ The principle applies even if the conduct occurred outside the employer's premises or during non-work time. 54/ Thus, the fact that the Robles and Hernandez conduct vis-a-vis Ruiz occurred away from the Highland premises at a time prior to the commencement of work is not dispositive of whether Highland is responsible for the conduct. A twofold test may be applied: did the Employer benefit from the conduct and did the employee reasonably believe that the supervisor was carrying out the wishes of the Employer while engaging in the conduct. Here, both questions must be answered affirmatively. I find Respondent Highland is chargeable with the acts of its supervisors Robles and Hernandez in their dealings with Ruiz regarding transportation to work.

However, contrary to the assertion of the General Counsel, I find that the evidence does not establish that but for his Union activities, Ruiz would have been provided with transportation to work after Arturo (the employee driver) quit. Despite Ruiz' substantial Union activities and despite the substantial independent Section 1153(a) conduct in which the Employer engaged, I

53/ N.L.R.B v. H. J. Heinz Co., 311 U.S. 514 (1941); N.L.R.B. v. Solo Cup Co., 237 F.2d 521 (8th Cir. 1956).

54/ Holmes Food. Inc., 170 NLRB 376 (1968), cited with approval in Whitney Farms, supra.

find the most reasonable inference to be drawn from the testimony of Ruiz himself is that he did not get a ride because he did not ask for one until the places were all taken. Other UFW activists were not refused, including two who also served as Union observers at the election. Nor was Ruiz the only person who was unable to find a ride.

The allegations of Paragraph 51 are dismissed with respect to both Ruiz and Carranza. 55/

J. November 1, 1977--Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores--Discharge. Eviction And Detention Of Each:

The complaint alleges that Highland Ranch violated Sections 1153(a) and (c) by discriminatorily discharging Galvan, Ramirez, Magana and Flores on November 1. The eviction of each from the labor camp operated by Highland for its employees is charged as an independent violation of Sections 1153(a) and (c). The detention of each at the main gate of Camp Pendleton until each returned to the military his base identification card is alleged to be a separate 1153(a) violation.

The Discharges: On November 1, 1977, Respondent Highland terminated Flores, Magana, Galvan and Ramirez. Each was issued a "Worker Notice" setting forth the reason for his discharge. The notices issued Magana and Flores stated:

> Tampered with Highland Ranch Notice on bulletin board. Removed Highland Ranch Notice from bulletin board and replaced the original copy with a photostat copy.

In addition to the above language, the notice issued Ramirez stated: "When asked where the original copy was he asked Fermin Galvan where he put it." The notice issued Galvan stated:

> Salvador Ramirez said Galvan had the original copy of the Highland Ranch Notice. We asked where was the original copy. He said somewhere and if you want it you can print another.

The circumstances giving rise to the issuance of the November 1 "Worker Notices" began on October 21 when Highland Ranch posted a bulletin advising the labor camp residents that their board cost was to be raised and that they were to be charged room rent for the first time.

On October 30 or 31 several workers, including Magana and Ramirez, spoke to Galvan about the notice and told him

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55/ As noted above, no evidence was offered regarding the circumstances under which Carranza was not able to obtain transportation after Arturo quit.

that something should be done because the workers' costs were going up without any increase in wages, whereas in the past wages had been raised concurrently with meal costs. They agreed that the notice would be brought to Galvan and that he would send it to the Union.

When Ramirez, Magana and Flores went to the kitchen on the 31st to get the notice, Juan Chavez, the cook, was present. He told them they should not remove the notice and said the boss will get mad if you take it down. Chavez suggested that they go to the office to obtain a copy; no attempt was made to do this. Although Flores was present when the notice was removed, Magana and Ramirez were the ones who took it down.

The evening of the 31st Galvan and Ramirez took the notice and some other papers to San Clemente to have them photocopied. When they finished, Galvan put the papers, including the notice, into an envelope and mailed them to the Union. Shortly thereafter Ramirez discovered that Galvan had put the original notice in the mail. 56/ He told Galvan there was no way the original could be retrieved; so they would have to return one of the copies. Ramirez gave a copy to Magana, explained to him what had happened, and told him to return it to the board. A xerox copy was returned to the bulletin board that night.

About 8:30 a.m. on November 1, the cook informed Isaac Rodriguez that Magana, Ramirez and Flores had removed the notice from the bulletin board. Shortly thereafter, Toby Tsuma arrived and there was a discussion among the three of them. When they finished talking, Rodriguez and Tsuma drove to the field where the Velasquez crew was working to speak to Ramirez.

Upon arrival, Rodriguez got out of the pickup to go talk to Ramirez. He told Ramirez to go to the office for his check, that he was fired. He then asked Ramirez what had been done with the notice which they had taken off the kitchen wall. Ramirez responded that he had given it to Galvan and told Rodriguez to go talk to him. 57/

56/Ramirez testified that the error occurred because Galvan cannot see very well. The findings regarding the removal of the notice are based upon the testimony of Galvan, Magana and Ramirez. Juan Chavez, the cook, did not testify. There is no evidence the cook is a supervisor within the meaning of the Act.

57/These findings are based upon the testimony of Ramirez and Garcia. Garcia is an otherwise uninvolved worker who was present at the time. He was employed by San Clemente Ranch at the time he testified. Rodriguez testified that his initial words with Ramirez were limited to inquiring what they had done with the original notice which they took down. All agree that Ramirez said to ask Galvan. Velasquez corroborated the Rodriguez testimony. The conflict in the testimony is resolved as indicated in the text. In so doing, I rely primarily upon the fact that Jose Garcia while testifying adversely to the interests of Respondent was--(continued)

Rodriguez, followed by Ramirez, proceeded to where Gal van was working and asked him what he had done with the original notice. When Gal van responded that he had seen the sheet that morning, Rodriguez said that Tsuma wanted the original. Galvan said it was the same thing, and if Tsuma wanted an original, he could make another one. Rodriguez went to speak with Tsuma. When he returned, he told Galvan and Ramirez that they were fired because they had taken down Ranch property and could not produce it. 58/ Galvan said they were going to return to the fields. Rodriguez told them they would be removed if they returned to work. Galvan then went to the pickup and demanded that Tsuma give him his check. Tsuma responded that the check would be ready when Galvan got to the office. Rodriguez and Tsuma drove off in search of Magana and Flores who worked in Bedolla's crew.

Tsuma and Rodriguez arrived where Flores and Magana were working and called from the field. Rodriguez told Flores that Tsuma wanted the notice. Flores admitted being present when the notice was removed but denied having participated in its removal. Rodriguez then asked Magana about the notice. Magana said he did not know where it was, but he thought that Galvan had it. Rodriguez reiterated that Tsuma wanted the notice and that they would be fired if the notice were not produced. When neither offered any response, Rodriguez told them they were fired and to go to the office to get their checks. Rodriguez and Tsuma then left the area.

There is no evidence that either Tsuma or Rodriguez asked any of the four persons discharged why the notice had been removed. Nor was any reason given the workers as to why the xerox copy which had been reposted was unsatisfactory.

Tsuma testified that he was interested in obtaining the notice because he was concerned that the signatures thereon would be misused. This concern arose because of the purported tracing of worker signatures on a UFW bulletin which he had seen.

The Labor Camp Eviction: About 3:30 that afternoon Omote met with the four discharged workers. He had their checks for them and was prepared to issue the checks in exchange for their base I.D. cards. Magana said that he had lost his card. Flores said he had left his card in Tia Juana. Galvan declined to give Omote his I.D. card, saying he would need it to return to the camp to get his belongings. He told Omote he would return it at that time and that his paycheck would serve as collateral in the mean-time. Ramirez refused because he wanted to show his I.D. card to a UFW lawyer before returning it. He told Omote that he needed the card to establish that he was classified as a tractor driver. He

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57/(continued)--currently employed by San Clemente, a fact which supports his credibility. Georgia Rug. 131 NLRB 1304.

58/This finding is based upon the testimony of Rodriguez.

said he would have the lawyer return the card to the Company. 59/ Faced with the nonproduction of the I.D. cards, Omote asked the four to wait and went to confer with Tsuma.

Tsuma telephoned a Sergeant Jessmore and told him that he had terminated four workers; that he had requested the return of their passes; and that they had refused his request. Jessmore told Tsuma the passes were government property and must be returned. After the workers still declined to turn in their cards, Tsuma called Jessmore a second time and once more told him the workers would not return their passes. Jessmore told Tsuma he was going to telephone the gate to stop the workers if they attempted to leave. He asked Tsuma to go to the gate for the purpose of identifying the workers. Jessmore arrived at the gate about an hour after he spoke with Tsuma. The workers and Tsuma were there when he arrived. 60/

The Camp Gate Detention: Ramirez, Galvan and Flores left the labor camp in Ramirez' car. They were stopped by the MP ' s at the camp entrance and asked to produce their base I.D. cards and their "green" cards.

Magana, who was leaving in his own car, was also stopped. He told the MP he did not have his I.D. card. The MP made Magana produce his wallet for examination. He told Magana his "green" card would be taken away, and he would be deported. When the MP was finally convinced Magana did not have his I.D. card, he secured a statement from Magana in which Magana promised to bring his car in within 10 days for the purpose of removing the bumper decal which permitted entrance onto the base. He was told he would be arrested if he did not return with the decal.

Shortly before the three were released, their green cards were returned, and Tsuma gave them their final checks. They were told that they would be arrested and jailed if they returned to the base. This statement was apparently made in response to Galvan's statement that he was going to return to the base to get his belongings. 61/

Sergeant Jessmore testified credibly about Corps procedures for dealing with civilian employees of base lessees. Every

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59/These findings are based upon the testimony of Galvan and Ramirez.

60/These findings are based upon credited testimony of Sergeant Jessmore. Tsuma testified that Jessmore came to the labor camp, and the two of them rode to the gate together. However, Tsuma' s recollection of most of the events about which he testified was hazy, especially when questioned on cross-examination. I credit Jessmore' s testimony.

61/These findings are based upon the uncontroverted testimony of Galvan, Ramirez and Magana.

employee of an agricultural lessee, e.g., Highland Ranch, receives the same type of pass. It is the lessee's responsibility to return the I.D. card of any person who ceases to be his employee. The card is turned in at the base gate.

When an employee is terminated for whatever reason, he must leave the base within a reasonable period of time. The Provost Marshall's office sets the rules for the time permitted one to gather his belongings and leave the base. There is no automatic grace period.

The Corps does not investigate discharges to determine whether or not they are justified. Its sole interest is the recovery of the base pass and auto decal from any employee terminated.

The workers were told they could leave once they relinquished their I.D. cards. Though there is some disagreement regarding how long the four workers were detained, it is uncontroverted that they were permitted to leave once their I.D. cards were relinquished.

The Discriminatees: Fermin Galvan--Galvan first worked for Highland from April, 1973, until January, 1974. Each year thereafter he worked eight or nine months starting in the spring of the year. In 1977 he started in March and worked until his discharge on November 1. Galvan was a general field worker. He planted, tied and cut cauliflower; he tied, cleaned, picked and stacked tomatoes; and he weeded corn.

Galvan joined the UFW in August, 1975, while employed at Highland Ranch. For approximately a month and a half following the passage of the Agricultural Labor Relations Act, Galvan passed out UFW authorization cards after work in the labor camp. These activities were observed and commented upon by Highland Ranch supervisors, including Isaac Rodriguez and Toby Tsuma.

During the months preceding the representation election of July 28, 1977, Galvan engaged in a variety of activities on behalf of the UFW. He passed out UFW authorization cards on a daily basis in the afternoon after work. He distributed UFW buttons and "fliers." He attended and spoke at Union meetings held at the Huntington Beach labor camp where Highland employees resided, at a worker's residence in Santa Ana and at the labor camp on the Ranch itself.

On several occasions Galvan, usually accompanied by Ramirez, Magana, Francisco Ruiz or Francisco Perez, visited other crews during the lunch period or during a break period to tell the workers of forthcoming Union meetings. He customarily wore a vest-like garment identifying him as a UFW spokesman and on some occasions used a bullhorn, bearing the UFW insignia, to address the workers.

Crew bosses Reyes, Prieto and Hernandez were each

present on one or more occasions when their crews were visited by Galvan and his associates. Galvan's testimony regarding these visitations was not contradicted by either Hernandez or Reyes during the course of their testimony. Prieto did not testify. The failure of Highland's witnesses to controvert Galvan's testimony warrants the inference his testimony is accurate and entitled to be credited I do so. ^

It is apparent that Gal van was actively engaged in conduct on behalf of the UFW and that Respondent Highland was aware of his activities.

Salvador Ramirez--Ramirez joined the UFW in 1975 but did not become active on its behalf until March, 1977, when he commenced wearing a UFW button to work every day. Both Isaac Rodriguez and Guadalupe Velasquez spoke to Ramirez regarding the button. Velasquez told him that he would get into trouble for wearing the button. Ramirez distributed buttons and leaflets for the UFW. He frequently accompanied Galvan on visits to other crews during the lunch break to announce forthcoming UFW meetings. He spoke to workers over a bullhorn at their pre-work gathering location. Crew foremen were customarily present. He addressed workers over a bullhorn in the labor camp dining room. On one occasion in the presence of Velasquez and Bedolla he introduced a non-employee UFW organizer to the workers in the dining room. In August, 1977, he sought time off from Tsuma, Velasquez and Omote to attend the UFW convention. He wore a jacket to work which bore the UFW eagle and the words "Viva Chavez" on it. His car had a UFW bumper sticker and sometimes he carried a UFW flag on his car.

As with Galvan, it is apparent that Ramirez engaged in a battery of activities on behalf of the UFW and that his activities were well known to Respondent Highland.

Jose Magana--Magana, prior to November 1, 1977, had three periods of employment with Respondent Highland Ranch. The first was during 1954-1955, the second was in 1964-1965, and the third began in 1970 and ended with his termination on November 1, 1977. During his employment Magana had worked as a field hand in all the Highland crops and had, on occasion, been a tractor driver and, during 1975-1976, a crew foreman on several of Respondent's crops. He did not work as a foreman in 1977. Haul Reyes told him the Company had removed him as a foreman because he was a Chavista. Another employee who had worked under Magana in previous years was made a foreman.62/

Magana joined the UFW in 1975. He commenced wearing a UFW button at work during February, 1977. Starting in mid-June, 1977, Magana was part of the Galvan group which spoke to the workers during their lunch breaks, their afternoon breaks and at the water pump pre-work assembly point for the Hernandez, Reyes,

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62/Although Reyes testified, he did not controvert this testimony by Magana.

Prieto and Robles crews.

Other manifestations of Magana's UFW activities were the distribution of fliers and buttons and a bumper sticker on his car. Magana's active participation in the UFW organizational campaign did not escape the notice of Highland supervisors. His testimony regarding his activities and their observation by Highland supervisors was uncontroverted.

Salvador Flores--Flores started work for Highland Ranch in 1974. Each year since then he worked from March through December.

He became a UFW member the day of the representation election, July 28, 1977. Every day thereafter he wore a UFW button to work as did everyone else in Bedolla's crew. Other than the button and his participation with Galvan, Magana and Ramirez in the incident precipitating their discharge, Flores did not engage in overt Union activity.

Discussion And Conclusions: The General Counsel contends that each of the discriminatees was discharged because he was an active supporter of the UFW.

The record contains substantial evidence that Galvan, Ramirez and Magana were prime movers in the UFW organizational campaign at Highland Ranch. It is apparent that Highland's management knew and understood that each of the three was extremely active on behalf of the UFW.

Salvador Flores was not conspicuously engaged in UFW activities prior to his involvement in the incident ostensibly causing his discharge. However, at the time he was fired, Highland knew of his part in removing the kitchen notice, and thus of his association with known UFW activists.

It is also clear that the November 1 termination occurred in an atmosphere of intense Employer hostility to the UFW which manifested itself most significantly in the Respondent's conduct on the day of the representation election, in the inauguration of new and significant employee benefits and work rules shortly before the election, and in the change in conditions regarding room and board at the labor camp. The presence of such animosity is a significant factor in determining an employer's motive for effecting discharges. See N.L.R.B. v. Amplex Corporation, 442 F.2d 82 (7th Cir. 1971); Maphis Chapman Corporation v. N.L.R.B., 368 F.2d 82 (4th Cir. 1966).

Respondent Highland argues that Ramirez, Magana, Flores and Galvan were discharged for willful damage to Company property, dishonesty and insubordination. 63/ The argument runs as

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63/Respondent Highland's brief erroneously refers to Galvan as Francisco Guzman.

follows: the removal and failure to return the original notice was willful damage to Company property; removing the notice after having been told not to was insubordination and failing to respond accurately when questioned about the location of the original notice was dishonesty.

Tsuma testified that Highland's concern regarding the return of the original notice, as opposed to the xerox copy which the workers had reposted, grew from the fact that he had seen a UFW flier on which the Union letterhead had been cut and pasted and his concern that his original notice might be wrongfully used. This explanation does not withstand examination.

Tsuma admitted that he would have given the workers a copy of the notice, had they requested one. For cut-and-paste and subsequent reproduction purposes a xerox copy would serve as well as the original. Moreover, even if one of the workers had returned the original, the illicit purpose feared by Tsuma would still have been possible, so it is unreasonable to conclude the workers would not have been terminated had the document been returned.

As authority for justifying the November 1 terminations were for cause, Highland cites N.L.R.B. v. Uniform Rental Service. Inc., 398 F.2d 812 (6th Cir. 1968}, for the proposition that an employer had a right to discharge an employee, even a union adherent, who wrongfully removed a poster from the employer's bulletin board. In so doing, the court declined to enforce a Board holding the termination violative of Section 8(a)(3). 64/ Labor Code Section 1148 mandates the Agricultural Labor Relations Board to follow applicable precents of the National Labor Relations Act. So far as Uniform Rental may be regarded as applicable to the instant case, it is the National Labor Relations Board decision rather than the Sixth Circuit decision which is appropriately regarded as the precedent. Administrative Law Judges under the National Labor Relations Act are constrained to follow Board precedents until the Board or the Supreme Court overrules them and despite contrary authority in a court of appeals. 65/ Thus, I find the Board decision rather than the Sixth Circuit opinion to be the applicable authority under the National Labor Relations Act.

In Uniform Rental, the NLRB found the employer's asserted reason for discharge, i.e., the removal of anti-union clippings from the employer's bulletin board, to be pretextual. The discriminatee had been the prime moving force behind the union's organizational campaign, had held organizational meetings in her home, had solicited authorization cards all with employer knowledge. The employer was admittedly hostile to the union. Juxtaposition of the facts found in Uniform Rental to the facts herein warrants the same conclusion reached by the National Labor Relations Board.

64/ Uniform Rental Service, 161 NLRB 221 (1966).

65/ Prudential Insurance Agents. 119 NLRB 768; Lenz Co., 153 NLRB l399; Iowa Beef Packers, 144 NLRB 615.

Had the room and board notice been removed and replaced by other than the prime movers of the Union campaign, it is unlikely that the severe penalty of discharge would have been imposed. There would have been no "fear" of misuse of the original and, thus, no reason for severe discipline.

The Union activities of Galvan, Ramirez, Flores and Magana may not have been the sole reason for their discharges, but there is substantial evidence in the record from which to infer that such activities were a contributing reason for the Respondent's action. The interdicted cause need not be the dominant cause for discharge, but may be so slight as to be the straw that broke the camel's back. 66/ Respondent Highland violated Sections 1153(a) and 1153(c) by discharging Galvan, Ramirez, and Magana on November 1, 1977. While Flores was less active than the other discriminatees, his discharge was tied to his association with the other three and also violated Sections 1153(a) and 1153(c). 67/

Having determined that Galvan, Ramirez, Magana and Flores were unlawfully discharged, I find the eviction of each to be an independent violation of the Act. Since their departure from the camp was required by the Marine Corps once they were no longer employed, it may be inferred that their discharges were inspired, at least partially, by a desire to evict them, thereby eliminating or severely limiting the opportunity of the four workers to communicate with the Highland work force. 68/

It is uncontradicted that the four workers were detained at the camp entrance until they were prepared to return their identification cards and business passes. The complaint alleges this detention to be an independent violation of Section 1153(a). 69/ It is also uncontradicted that once they produced the requested Marine Corps property, the workers were released and permitted to leave. The discriminatees by initially refusing to produce the "I.D." cards or passes created the need for their detention. It does not appear from the credited testimony of Sergeant Jessmore that the procedure followed with respect to the four while they were at the main gate was inconsistent with standard Marine Corps procedures for obtaining the return of government property.

The General Counsel has urged that the Corps was acting as Highland's agent for the purpose of discriminating against the workers. This contention is not borne out by the evidence. There is no substantial evidence in the record which supports an

66/ S. Kuramura, Inc., 3 ALRB No. 49, p. 12 (1977); As-H-Ne Farms. 3 ALRB No. 53 (1977).

67/ Crucible, Inc., 228 NLRB No. 84 (1977); N.L.R.B. v. Armcor Industries, Inc., 535 F.2d 239 (3rd Cir. 1976).

68/ See McAnally Enterprises, Inc., 3 ALRB No. 82 (1977).

69/Paragraphs 34, 35, 36 and 37.

inference that the military deviated from its customary practices. The cases cited by the General Counsel are inapposite. 70/ I shall recommend that Paragraphs 34, 35, 36 and 37 of the Second Amended Complaint be dismissed.

K. Respondents' Refusal To Bargain;

Allegations Of Complaint: Paragraph 42 of the complaint alleges that Highland Ranch violated Sections 1153(a) and (e) of the Act by failing to notify the UFW of its decision to sell its business to San Clemente, by failing to meet with the UFW prior to going out of business, by unilaterally ceasing business operations, by not bargaining in good faith regarding the effects of its decision to sell its business, by delay in furnishing the UFW with requested information relevant to effective bargaining and by failing completely to furnish certain other requested information relevant for bargaining.

Paragraph 43 alleges that San Clemente as a successor employer has at all times refused to bargain in good faith with the UFW, thereby violating Labor Code Sections 1153(a) and (e).

The Sale Of Highland Ranch: Toby Tsuma contacted Deardorff-Jackson in the latter part of September, 1977, about acquisition of the Highland property. Thereafter, Deardorff and Williams talked with Tsuma at least 12 times during the period from late September until the end of November. The negotiations were carried on by telephone as well as in face-to-face meetings. All aspects of the sale were discussed. The main topics were transfer of the lease and the sale of the Highland equipment. When the decision to purchase Highland was made, San Clemente Ranch, Ltd., was established for the purpose of operating the property.

Tsuma had farmed the Highland Ranch property since 1954. At the time of the transfer to San Clemente the lease had approximately 25 months to run. Highland Ranch offered no testimony to explain either the decision to divest itself of its

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70/ Western Tomato Growers, et al. 3 ALRB No. 51, p. 4 (1977), a private individual and a private group found to have acted in the interest of an agricultural employer when, by threats of violence, use of firearms, clubs and other weapons, they prevented union organizers from entering a grower's fields; Vista Verde Farms. 3 ALRB No. 91 (1977), dealt with the grower's responsibility for conduct of a labor contractor who engaged in conduct which forcibly demonstrated to employees the intensity of his opposition to the union; Tex-Cal Land Management. 3 ALRB No. 14 (1977), wherein the Board cited NLRB law for the proposition that having law enforcement officers remove union organizers from the premises does not provide insulation from unfair labor practices where the employer engaged in physical violence toward the organizers; Anderson Farms. 3 ALRB No. 67 (1977), in which the Board stated the presence of law enforcement officers on the property when organizing activity is being carried out has a chilling effect upon such activity.

agricultural interests or the timing of the divestment.

During the course of the negotiations with Deardorff and Williams, Tsuma told them there were outstanding unfair labor practice charges against Highland Ranch. Tsuma said he would take care of the charges. At his direction the following paragraph was added to the Sale and Escrow Instructions:

> Any unfair labor charges issued prior to December 15, 1977 against Highland Ranch will be resolved or disposed of by Seller.

Prior to completing the transaction Deardorff consulted the Deardorff-Jackson attorneys to ascertain what liability San Clemente might have arising from any labor problems in which Highland was involved.

San Clemente took possession of the Highland property on December 1, 1977. The transition had initially been scheduled for December 15; however, when Highland completed its tomato harvest during the last week of November, laid off its employees and vacated the premises, San Clemente wanted earlier occupancy in order to protect the cabbage crop which had been planted. The earlier possession was discussed between Tsuma and Williams during the last week of November. When San Clemente took over the property, it hired a former Highland employee to keep the crop alive until the escrow closed.

In addition to acquiring Highland's leasehold interest in 647 acres on the Camp Pendleton Marine Base, San Clemente purchased all Highland's assets, except its box-making machinery, as well as the rights to Highland's trade names and logos. 71/ The Collateral Security Agreement executed by the parties requires San Clemente to use the machinery it acquired from Highland solely in connection with the San Diego County (Camp Pendleton) operation and prohibits transfer of any of the acquired assets or their removal from the area without prior permission of Highland Ranch.

November 29, 1977: Toby Tsuma appeared at the San Clemente Branch, Bank of America, about 10:00 a.m. on November 29, 1977, to execute an assignment of the leasehold, Sale and Escrow Instructions, a Collateral Security Agreement and a Bill of Sale. The documents were intended to effect the transfer of Highland's leasehold interest to San Clemente and the sale of its farming equipment to San Clemente.

The Agricultural Labor Relations Board's certification of the UFW as collective bargaining representative of Highland's employees issued on November 29. Telegram notice of the certification was sent to all parties in the early afternoon of

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71/ Williams testified the lease covered 385 acres. The acreage cited is that set forth in the Sale and Escrow Agreement.

that day. Upon learning that certification had issued, UFW attorney Heumann sent a telegram to Highland Ranch requesting negotiations regarding wages, hours and working conditions, and requesting that a meeting be held prior to effecting a camp shut-down or any layoffs. 72/ The telegram was delivered at 5:59 p.m. on the 29th. In addition to the Heumann telegram, Scott Washburn, the UFW's San Diego County Director, attempted, at approximately 4:00 p.m. on the 29th to reach Toby Tsuma by phone. The person to whom he spoke told him that Tsuma was not in the office and would return the call.

After failing to reach Tsuma, Washburn placed a call to Deardorff-Jackson in Oxnard to apprise them of the UFW's Highland certification and of the fact that unfair labor practice charges had been filed against Highland Ranch. The call to Deardorff-Jackson was occasioned because Washburn had heard that a sale was imminent. Washburn spoke to a salesman who told him that Deardorff was the one involved in the transaction and that he was at Newport Beach.

At approximately 4:30 p.m. Washburn reached Deardorff at the office of Western Growers' Association in Newport Beach. He told Deardorff the UFW had been certified. He asked what the Company's plans were for the workers and also asked whether Deardorff was aware of the unfair labor practices on file against Highland. Deardorff acknowledged awareness of the charges and told Washburn the people were laid off because the tomato season was finished. He suggested that Washburn contact his legal representative and stated that Western Growers would probably represent them. 73/

November 30, 1977: Deardorff and Williams executed the sale papers about 1:00 p.m. on the 30th at the escrow department of the Bank of America in San Clemente. Both Toby Tsuma and Sue Omote had previously executed the documents. 74/

72/This represents the first demand to bargain communicated to Highland Ranch.

73/Deardorff had no clear recollection of this telephone conversation. He was unsure whether Washburn inquired of his awareness of the Highland unfair labor practices. I credit Washburn's testimony on this point. It is likely in view of the pendency of the charges and the change of ownership that Washburn would have inquired regarding Deardorff's knowledge. Deardorff's prior knowledge of the charges is readily inferred from his admission that prior to the sale he contacted Gibson, Dunn & Crutcher, his attorneys, regarding San Clemente's liability with respect to any labor litigation involving Highland.

74/Both Deardorff and Williams testified to November 30 as the date of their execution of the documents. Both testified that the signatures of Tsuma and Sue Omote were already on the documents when they executed them. --(continued)

Washburn spoke to Tsuma by telephone at approximately 10:00 a.m. on the 30th. He demanded to meet that day to bargain about the effects of the sale of Highland Ranch upon bargaining unit employees. Tsuma told him to speak to Highland's lawyer.

At approximately 10:30 Washburn spoke to Marion Quesenbury, Highland's lawyer, and apprised her of the Union's certification and demanded to meet that day before the camp closed. Quesenbury told him the sale was not final until January 1. She stated she was unaware of San Clemente's plans, but she thought hiring would start about February 1 and that there would be no problem with respect to hiring the former Highland employees. She advised Washburn that she would have to contact her superior, Don Dressler, to see when a meeting could be arranged.

Quesenbury called Washburn that afternoon and suggested December 2 as a meeting date. Washburn agreed to meet on the 2nd if no one were laid off before that time. When Quesenbury said the people were being laid off that day, Washburn declined to meet on the 2nd. Late that afternoon Washburn modified his position and the UFW agreed to meet on the 2nd as proposed by Quesenbury.

December 2, 1977: Representatives of the UFW met with Dressier and Tsuma at the Western Growers' offices on December 2. 75/ Alex Beauchamp, acting as spokesman for the UFW, presented the Union's standard Request for Information form and in addition asked specific questions regarding Highland, its relationship to the buyer, the identity of the buyer, and what was happening to the equipment and the lease. 76/ Dressler noted the questions and said he would respond the following week. Beauchamp then submitted three UFW demands: the reopening of the labor camp pending rehiring; severance pay for those employees working the three previous months; and a 5c per hour contribution into the UFW's Martin Luther King Fund for every hour worked during the previous three months.

74/(continued)--The escrow officer from the Bank of America, Eleanor Fouch, testified Deardorff and Williams signed on the 29th. Her testimony is not credited. The circumstances of the execution make it clear her testimony is unreliable. She testified that Tsuma appearing by himself signed and dated the documents in her presence and that Sue Omote arrived later that day to sign and date the documents. Tsuma testified that Omote accompanied him to the Bank to sign the papers and that she entered the dates on each document. A comparison of the handwriting of Omote and Tsuma with the writing of the dates shows them to be written by Omote. Moreover, the Tsuma testimony is consistent with that of Deardorff and Jackson with respect to Omote having signed before Deardorff and Jackson.

75/Present for the UFW were Beauchamp, Washburn, Galvan, Flores, Ruiz, Sagredo and Estrada.

76/ The Request for Information form seeks information regarding the name, age, sex and residence of -- (continued)

Dressler and Tsuma caucused and returned with Highland's response. Dressler said since the Company was leaving agriculture, it had no need for the camp and would not agree to reopen it. He said Highland was not in an economic position to pay severance pay. With respect to the King Fund, Dressier said Highland would not consider making contributions into the fund until it had seen its current financial statement. 77/

On December 9, 1977, the UFW made a written demand on Deardorff that negotiations commence between San Clemente and the UFW. On December 21 San Clemente notified the UFW that it refused to bargain because the UFW was not the certified bargaining representative for its employees.

December 13, 1977: On the 13th Washburn wrote Dressier requesting a response to the Request for Information presented at the December 2 meeting and requesting that no further changes be made in wages, hours or working conditions. Washburn asked Dressier to contact him concerning these matters. On December 20, 1977, Dressier forwarded the UFW a written response to the December 2 questions regarding the sale. No response to the Request for Information was sent the Union.

February, 1978: On February 17, 1978, the UFW sent Highland Ranch another Request for Information. No response was received.

On February 27, 1978, the UFW sent San Clemente Ranch its Request for Information. No response has been received. San Clemente admits that it has acted unilaterally with respect to the wages and working conditions of its employees.

Discussion And Conclusions;

1. Highland's Refusal To Bargain

(a) Failure To Give Notice Of Sale--It is a well established principle under the National Labor Relations Act that an employer violates Sections 8(a)(1) and 8(a)(5) when, without consulting the union, it makes changes in the terms and conditions of employment during the pendency of objections to an election

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76/(continued)--each bargaining unit employee; the date of hire and job classification of each employee; the employer's fringe benefits; the wages and fringe benefits of non-bargaining unit employees; copies of any contracts with other labor organizations; production data including copies of production records; and a list of the pesticides and equipment used by the employer.

77/The financial statement was never made available to Highland Ranch. The testimony of Washburn and Tsuma regarding the events of December 2 is in accord and is the basis for the above finding.

which eventually results in certification of the union.78/

> The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made. . . And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a) (5) and (1) for having made such unilateral changes. . . Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending.
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> 209 NLRB at 703; footnotes omitted.

The General Counsel does not contend that the layoffs of November 30, 1977, resulting from the discontinuance of Highland's operations violated Section 1153(e); nor does he contend that Highland's decision to cease operations violated Section 1153 (e). This position is consistent with applicable NLRB precedent.79/ However, Respondent, having made the decision to discontinue his business had an obligation to notify the UFW of this decision and bargain regarding its effects.80/

The NLRB principles are equally appropriate in determining whether an employer has violated Section 1153(e) despite the presence in the statute of Section 1153(f) making it an

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78/ W. R. Grace & Co., 230 NLRB No. 76, 95 LRRM 1459, 1461 (1977); Mike O'Connor Chevrolet. 209 NLRB 701 (1974).

79/ W. R. Grace & Co., supra.

80/ Van's Packing Plant. 211 NLRB 692, 698 (1974). The failure to do so deprived Highland employees of the opportunity to bargain while Respondent still needed their services and a "measur of balanced bargaining power existed." See Van's Packing Plant. supra, at p. 692.

unfair labor practice to bargain with an uncertified union.81/ Although there is no legislative history to illuminate the Legislature's intent in prohibiting an employer from bargaining with an uncertified union, the most reasonable conclusion is that the section was added to prevent voluntary recognition of a labor organization which might not be the majority bargaining representative. Such recognition had been, prior to enactment of the ALRA, a source of internecine strife between the UFW and the Teamsters as well as disputes between the UFW and various growers. But, it does not follow that a proscription aimed at preventing circumvention of ALRB processes is appropriately applied in the context of this case. Certainly, from the point in time when Respondent's objections to the election were dismissed, all that remained was the ministerial act of issuing the certification. From that point forward Respondent cannot escape his duty to bargain regarding the effects of its decision by relying on 1153(f). Respondent Highland violated Section 1153(e) by failing to notify the UFW and bargain about the effects of its decision to go out of business.

I conclude that Section 1153(f) does not protect an employer who has made unilateral changes in wages and working conditions from being held to have violated Section 1153(e) when the union is subsequently certified.

The prohibition against unilateral changes pending resolution of objections is specifically applicable to decisions to go out of business.

(b) Failure To Furnish Information--An employer is obligated to furnish the representative of its employees information which is reasonably necessary and relevant to enable the representative to perform its bargaining function intelligently.82/ Satisfaction of this duty requires that the information be furnished with reasonable promptness.83/ The Union was entitled to a prompt response to its inquiries of December 2 regarding the circumstances of the transfer of the operation from Highland to San Clemente. The information was necessary to enable it to ascertain whether Highland had any ongoing interest in the operation and to ascertain whether it might legitimately argue that San Clemente had an obligation to bargain.

The information requested was obviously within the knowledge of Tsuma and Dressier and could have been given orally at the December 2 meeting. However, Dressier did not respond until December 20. The delay in providing the information at an earlier

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81/Section 1153(f) provides that it shall be an unfair labor practice for an agricultural employer "(f) to recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the provisions of this part."

82/Autoprod, Inc., 223 NLRB 773 (1976).

83/ B. F. Diamond Construction Company. 163 NLRB 161. 175 (1967).

date is unexplained. Highland's failure to supply with reasonable promptness the requested information regarding the transition violated Section 1153(e).

With respect to the information sought in the Union's Request for Information, much of it too is reasonably necessary to enable the Union to ascertain whether it could seek to bargain with San Clemente. Without knowledge of the Highland operations, it would be unable to ascertain whether San Clemente's methods were the same or different. The same is true with respect to the information sought regarding the composition of the Highland work force, including its supervisorial structure. The failure to provide this information violated Section 1153(e).

In the context of the UFW's limited bargaining demands, i.e., severance pay of $500.00 per person, reopening of the labor camp and Employer contributions into the King Fund, it is not apparent that the fringe benefit information requested can be regarded as reasonably necessary and relevant. The same is true of the request for information regarding the wages and fringe benefits of non-bargaining unit employees and for copies of contracts with other labor organizations. The failure to supply these items of information did not violate Section 1153(e).

(c) Bad Faith Table Bargaining--The General Counsel argues that Highland's posture at the negotiating session of December 2 is a separate violation of Section 1153(e). I disagree. The UFW presented its proposal, the Employer caucused to study the proposal, and returned to tell the Union its proposals were rejected, giving anticipated explanations for such rejections. This was the initial meeting between the parties; total rejection of a union's initial proposals is not unusual and by itself cannot be deemed a failure to bargain in good faith. Since there is no evidence the Union ever requested another meeting, there is no way to ascertain whether Highland's behavior on December 2 was the first step in a course of conduct of failure to bargain in good faith.

2. San Clemente's Refusal To Bargain

(a) Status As A Successor Employer--Section 1153 (e) makes it an unfair labor practice for an employer to refuse to bargain with labor organizations certified pursuant to the provisions of the Act. This section tracks Section 8(a)(5) of the National Labor Relations Act and cases decided thereunder provide appropriate precedent for resolving refusal to bargain problems arising under the Agricultural Labor Relations Act.

However, there is an area of difference between the two statutes which is germane in reaching a conclusion as to whether Respondent San Clemente has violated Section 1153(e). The National Labor Relations Act requires an employer to bargain with the representative of the majority of its employees in an appropriate unit irrespective of whether the representative has been certified as the majority representative pursuant to the election process

in the statute. Thus, under the NLRA an employer may violate Section 8(a)(5) by refusing to bargain with an uncertified union in the absence of a good faith doubt that the union is the majority representative. Such voluntary recognition is prohibited by Section 1153(f) of the ALRA which makes it an unfair labor practice for an employer to bargain with an uncertified union.

Respondent San Clemente urges Section 1153(f) as a defense to the charge it has violated Section 1153(e). The argument misconceives the purpose of Section 1153(f) and overlooks the theory under which San Clemente can be held to have an obligation to bargain. As noted above, the obvious purpose of Section 1153(f) is to prevent voluntary recognition of a union claiming to be the majority representative of the employer's agricultural employees. This conclusion is reinforced by reference to Section 1159 invalidating collective bargaining agreements to which other than certified unions are parties. But, in the present case any duty to bargain placed on San Clemente arises because it voluntarily took over the Highland operation and the Highland bargaining unit with its recently certified Union as the employees' representative. Contrary to the assertion of San Clemente, if the applicable NLRA conditions are present requiring a successor to bargain with the certified union, the purposes of the ALRA would be frustrated if such an employer is not here required to bargain.

It has consistently been held in National Labor Relations Board cases that a change of employers or of ownership standing alone does not affect the force of an existing certification within its normal operating period. N.L.R.B. v. Burns International Security Services, Inc., 406 U.S. 272, 279 (1972). This principle is appropriately applied in the context of the present case to hold that Section 1153(f) does not operate to provide San Clemente with a defense to charges it violated Section 1153(e).

As a separate defense, San Clemente argues it has no obligation to bargain because it is not a "successor" employer of Highland Ranch. The lead case in the area of successorship is N.L.R.B. v. Burns International Security Services, Inc., supra, in which the court stated:

> . . . where the bargaining unit remains unchanged and a majority of the employees hired by the new employer are represented by a recently certified bargaining agent there is little basis for faulting the Board's implementation of the express mandates of Section 8(a) (5) and Section 9(a) by ordering the employer to bargain with the incumbent union.
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> 406 U.S. at 281.

There can be little argument with the proposition that the employing industry has remained substantially unchanged by

the change in ownership. The same land is to be farmed under the same lease arrangement with the Marine Corps. The same equipment is to be used. The same farming methods are to be used. San Clemente uses essentially the same job classifications as Highland. San Clemente employed its supervisors from among those used by Highland. Its packing shed manager is the person who functioned in this capacity for Highland. There are no significant operational changes affecting bargaining unit employees which have so far been instituted, nor does the record reveal that any are contemplated.

Burns and subsequent Board and court cases have not imposed a duty to bargain upon the successor unless a majority of its employees were employed by the predecessor. The "majority" which is of significance is a majority of the successor's work force. San Clemente's reliance on the fact that it has not employed a majority of Highland's employees is misplaced. When the new employer continues operations substantially unchanged and the bargaining unit continues intact, the new employer succeeds to the predecessor's obligation to bargain when a majority of the new employer's work force is determined to have come from the predecessor's bargaining unit. United Maintenance & Manufacturing Co., 214 NLRB 529, 532 (1974).

Herein, there is a fact situation in which prior to March 23, 1978, a substantial majority of San Clemente's employees formerly worked for Highland. As of March 23, San Clemente had 150 employees, 42 of whom were supplied by a labor contractor and of whom 70 were former Highland employees. On December 9 the UFW demanded recognition. Its letter of February 27, 1978, and the accompanying Request for Information manifested an ongoing interest in and demand for collective bargaining. No response was ever received from San Clemente.

The crucial question is whether San Clemente had an obligation to bargain upon demand at a time when its work force, though consisting mainly of Highland employees, was at substantially less than peak period strength. The well established NLRB rule is that the critical date for determining the Union's majority status is the date upon which the request for bargaining is transmitted to the Employer. Any increase in the bargaining unit subsequent to that date is immaterial.84/ Therefore, Respondent San Clemente's obligation to bargain vested on December 9, 1977, the date on which the UFW first requested bargaining. The UFW's loss of majority status as of March 23 is of no legal significance in view of Respondent's refusal to bargain at all times subsequent to December 9, 1977, and particularly in view of Respondent's unilateral decision to change the hiring practices by utilizing a labor contractor.85/ It was not until a labor contractor was utilized as

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84/ The Daneker Clock Company, Inc., 211 NLRB 719, 721 (1974), enf'd 516 F.2d 315 (4th Cir. 1975); G. Conn, Ltd., 197 NLRB 442 (1972).

85/ Pre-Engineering Building Products, Inc., 228 NLRB No. 70, 96 LRRM 1170 (1977), nor is it of legal significance -- (cont.)

a source of employees that the majority of San Clemente's employees ceased to be former Highland employees.

Respondent argues that the NLRB principles recited above are not applicable because of differences between the agricultural industry and industry in general and notes that these differences are recognized in the representational provisions of the ALRA. Relying upon those differences, Respondent urges that no duty to bargain can arise in the successor unless and until the successor has employed at least 50% of its peak period work force was employed by the predecessor.

The difficulty with such an argument is that it places the successor in a more advantageous position vis-a-vis the union than was the seller. As the result of the UFW's certification, Highland was obligated to bargain with the UFW for a period of one year. It could not challenge the majority status of the Union or refuse to bargain with it during a period of slack employment. Thus, had Highland continued to operate, its obligation to meet and bargain in good faith with the UFW would not abate because less than a majority of its peak period work force was employed at the time bargaining was demanded. San Clemente is not entitled to be in a better position. A mere change in ownership does not constitute "unusual circumstances" sufficient to rebut the presumption of the UFW's continued majority status which was created by the certification bar, particularly in a context in which for a period of three months after acquisition, the successor's work force consisted overwhelmingly of workers employed by the predecessor. Dynamic Machine Co. v. N.L.R.B., 552 F.2d 1195 (7th Cir. 1977).

For the reasons set forth above, Respondent San Clemente violated Section 1153(e) at all times subsequent to December 9, 1977, by failing and refusing to bargain in good faith with the United Farm Workers.

(b) Failure To Furnish Information--San Clemente has admitted it failed, at all times subsequent to February 27, 1978, to supply the information sought by the UFW's Request for Information. For the reasons noted above, this failure violates Labor Code Section 1153(e).

THE REMEDY

The Second Amended Complaint seeks joint and several relief against San Clemente Ranch for unfair labor practices committed by Highland Ranch during the period before December 1, 1977. To the extent set forth below, I find such relief to be appropriate.

The lead case dealing with the question of whether a successor can be held liable for a predecessor's unfair labor practices is Golden State Bottling Co. v. N.L.R.B., 414 U.S. 168, 84

85/continued)--in view of San Clemente's continuing refusal to bargain that the UFW did not resume its demand after March 23.

LRRM 2839 (1973), in which the court again recognized that the NLRA does not restrict the NLRB's remedial powers to the actual perpetrator of an unfair labor practice and thereby prevent the Board from issuing orders binding a successor who did not itself commit the unlawful act.

> Avoidence (sic) of labor strife, prevention of a deterrent effect on the exercise of rights guaranteed employees by Section 7 of the Act, 29 U.S.C. Section 157, and protection for the Victimized employee -- all important policies subserved by the National Labor Relations Act, see 29 U.S.C. Section 141 -- are achieved at a relatively minimal cost to the bona fide successor. Since the successor must have notice before liability can be imposed, "his potential liability for remedying the unfair labor practices is a matter which can be reflected in the price he pays for the business, or he may secure an indemnity clause in the sales contract which will indemnify him for liability arising from the seller's unfair labor practices. . . "
>
> 84 LRRM at p. 2845.

Contrary to the contention of Respondent San Clemente, I find there is substantial evidence in the record from which to inf that San Clemente had knowledge of outstanding and unresolved unfair labor practices filed against Highland Ranch at the time San Clemente commenced operations, i.e., the presence of an indemnity clause in the sales and escrow agreement, Tsuma's testimony, which I credit, that he told San Clemente representatives of the charges and that he would take care of them, and San Clemente's consultation with its lawyers regarding its liability for Highland's labor problems.

I shall recommend that San Clemente be held jointly and severally liable for the following unfair labor practices found to have been committed by Highland Ranch. The discharge of Francisco Perez Navarro. The discharge and eviction from the labor camp of Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores, The refusal to offer harvest tractor driving to Salvador Ramirez Ramirez. The removal of Francisco Ruiz Guzman from the shed crew.

There were five additional charges filed against Highland Ranch; however, each was filed after San Clemente took over the Ranch operation, and San Clemente cannot be charged with notice thereof. I shall recommend that Highland Ranch alone be held liable for violations of the Act flowing from said charges.

In summary, having found that Respondent San Clemente Ranch is a successor employer to Highland Ranch and had knowledge at the time it became a successor of unfair labor practices with

which Highland was charged, I shall recommend that San Clemente Ranch be jointly and severally liable for remedying the unfair labor practices with which Highland was charged prior to December 1, 1977.

Having found that Respondent Highland Ranch engaged in certain unfair labor practices within the meaning of Sections 1153 (a), 1153(c), 1153(e) and 1155.2(a) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that San Clemente Ranch engaged in certain unfair labor practices within the meaning of Sections 1153(a), 1153 (e) and 1155.2(a) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Board has held that a make-whole remedy is appropriate affirmative relief for employer violations of Section 1153 (e) whenever employees have suffered loss of pay as a result. Adam Dairy, 4 ALRB No. 24 (1978). The employees' loss of pay may be presumed. Perry Farms, 4 ALRB No. 25 (1978). Having found San Clemente to be a successor employer with an obligation to bargain in good faith with the UFW and having found that San Clemente has not so bargained, I shall recommend that San Clemente be ordered to make whole its employees for their losses of pay resulting from its refusal to bargain.

As provided in Adam Dairy, supra, "pay" shall include wages paid directly to employees together with all fringe benefits capable of monetary calculation.

> The appropriate period for the application of the make-whole remedy is from the date of the first refusal to bargain until Respondent begins to bargain in good faith and thereafter bargains to contract or impasse.
>
> 4 ALRB No. 24, at p. 16.

The UFW made its initial bargaining demand upon San Clemente by letter of December 9, 1977. I shall recommend that December 9, 1977, be used as the starting date for calculating the make-whole relief with the terminal date to be the date upon which San Clemente starts to bargain in good faith and continues to do so until impasse or agreement. The calculation of the make-whole relief shall be in accord with the formula set forth by the Board in Adam Dairy, supra.

The Board has not yet been presented the problem of fashioning an appropriate remedy to compensate employees for losses suffered because the employer failed to bargain regarding the effects of its decision to go out of business.

When an employer who is engaged in continuing operations refuses to bargain, loss to his employees can be presumed. (Perry Farms, supra) This presumption is inappropriate when the employer goes out of business, particularly when the cessation of operations occurs at a time when a seasonal shut-down normally occurs. Highland laid off its employees at the end-of the tomato harvest. Thus, any hiatus in a worker's employment may have occurred irrespective of whether Highland had ceased operating. Former Highland employees may have gone to work for San Clemente or other growers at or near the time they would have been expected to return to work at Highland. There is no evidence in the record from which the nature and extent of losses, if any, to Highland employees can be inferred.

An employer who continues to remain in business, if not faced with the make-whole remedy, can benefit from violating the Act by postponing the time when it must pay increased wages and benefits required by a new contract.86/

However, if the employer has gone out of business, no ongoing benefit accrues to him, nor is there any ongoing harm to the employees accruing daily as the result of the refusal to bargain. The rationale for the make-whole remedy is not present in such a case.

However, as the result of Respondent's failure to bargain about the effects of its closing, the displaced Highland employees have been denied an opportunity to bargain through their collective bargaining representative at a time when the Respondent was still in need of their services, and a measure of balanced bargaining power existed.87/

> Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order, therefore, cannot serve as an adequate remedy for unfair labor practices committed.
>
> 211 NLRB 692.

Accordingly, in order to effectuate the purposes of the Act, 1 shall recommend that Highland be ordered to bargain over the effects of its Ranch closing; and I shall recommend a limited back pay requirement designed to compensate employees for losses suffered as a result of the violation and ". . .to recreate in some practical manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent." Van's Packing Plant, supra.

86/ At least in a situation in which the union has not opted for economic action.

87/ Van's Packing Plant, 211 NLRB 692 (1974).

I shall recommend that Highland pay all agricultural employees back pay at the rate of their normal wages as of November 29, 1977, from five days after this decision until the occurrence of the earliest of the following conditions:

> (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant shutdown on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or commence negotiations within *5* days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from . . . the date on which the Respondent terminated its . . . operations, to the time he secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.
>
> 211 NLRB 692.

Having found that Respondents, and each of them, unlawfully refused to furnish the UFW with information requested by it relevant to the preparation for and conduct of collective bargaining, 1 shall recommend that the requested information be forwarded in writing to the UFW at an address it designates within 14 days of receipt of the Decision and Order of the Board.

In view of Respondent San Clemente's refusal to bargain during the initial certification year, and in order to insure that its employees will be accorded the services of their selected bargaining representative for the period provided by law, *I* shall recommend that the Union's initial certification be extended for one year from the date on which Respondent San Clemente commences bargaining in good faith with the Union.88/

Having found that Respondent Highland unlawfully removed Francisco Ruiz Guzman from shed work on April 26, 1977, I shall recommend that Respondents jointly and severally be ordered to make Ruiz whole for any loss of overtime pay resulting from Highland's unlawful act together with interest thereon at 7% per annum.

Having found that Respondent Highland unlawfully refused to assign Salvador Ramirez Ramirez to work as a harvest tractor

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88/ Adam Dairy, supra, at pp. 30-31.

driver during the 1977 corn harvest, I shall recommend that Respondents jointly and severally be ordered to make Ramirez whole for any loss of pay resulting from Highland's unlawful act together with interest thereon at 7% per annum.

Having found that Respondent Highland Ranch unlawfully discharged and evicted from their labor camp Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores, on November 1, 1977, I shall recommend that Respondents jointly and severally be ordered to make each whole for any loss of pay resulting from Highland's unlawful act, together with interest thereon at the rate of 7% per annum. I shall also recommend that Respondents jointly and severally be ordered to make Galvan, Ramirez, Magana and Flores whole for any loss suffered as a result of his unlawful eviction. Since each of the four was reinstated pursuant to court order during early November, I shall recommend that the pay loss and loss attributable to the eviction be limited to the period in November, 1977, when each was off work because of his unlawful discharge.

Having found that Respondent Highland unlawfully discharged Francisco Perez Navarro on August 9, 1977, I shall recommend that Respondents jointly and severally be ordered to make him whole for the loss of pay resulting from Highland's unlawful act, together with interest thereon at the rate of 7% per annum. I shall further recommend that Respondent San Clemente offer him immediate and full reinstatement to his former or a substantially equivalent job.89/

Having found that Respondent Highland Ranch unlawfully discharged Salvador Guzman Ortiz on August 24, 1977, I shall recommend that Respondent Highland Ranch be ordered to make him whole for any loss of pay resulting from its unlawful act, together with interest thereon at the rate of 7% per annum.90/

Having found that Respondent Highland Ranch unlawfully refused to grant Bartolo Prado Navarro an emergency leave on September 2, 1977, I shall recommend that Respondents jointly and severally be ordered to make him whole for any loss of pay resulting from Highland's unlawful act for the period commencing after September 19, 1977 (the Monday following the expiration of the

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89/I recommend that San Clemente, as the successor to Highland, ¥e required to offer reinstatement because Perez, unlike the other discriminatees, was not returned to work during the period of Highland's operations. His unlawful discharge cannot be fully remedied without an offer of reinstatement.

90/Since Highland is no longer operating, a reinstatement order directed against it would be unavailing. I shall not recommend that such an order issue with respect to San Clemente since the underlying charge was not filed until December 19, 1977. and I have found that San Clemente is not chargeable with knowledge thereof.

requested two-week leave of absence) and ending the date upon which he was unconditionally offered reinstatement.

In order to more fully remedy Respondent Highland's unlawful conduct, I shall recommend that it shall make known to all persons in its employ at any time during the period from July 28, 1977, to December 1, 1977, that it has been found to have violated the Agricultural Labor Relations Act, that it has been ordered to make certain of its former employees whole for wage losses resulting from its unlawful acts, and that it has been ordered to bargain with the United Farm Workers about the effects of its having ceased to be an agricultural employer, and that it has been ordered to cease violating the Act and not to engage in future violations.

To this end I shall recommend:

(1) That Respondent Highland be ordered to execute and to mail a copy of the attached Notice to Former Highland Ranch Employees to each person in its employ at any time during the period cited above to the address for said person furnished Respondent by the Regional Director, San Diego Region.

(2) That upon translation of the Notice into Spanish by a Board agent, Respondent shall reproduce sufficient copies of the Notice in English and Spanish for the purposes set forth above.

(3) That Respondent Highland Ranch shall notify the San Diego Regional Director in writing, within 30 days of the receipt of this proposed order, what steps have been taken to comply with it, and that Respondent shall, upon request, notify the Regional Director periodically what further steps have been taken in compliance with the proposed order.

In order to more fully remedy Respondent San Clemente's unlawful conduct, I shall recommend that it shall make known to its employees that it has been found in violation of the Agricultural Labor Relations Act, that it has been ordered to make its employees whole for losses of pay resulting from its unlawful acts, that as a successor to Highland Ranch it has been found to be jointly and severally liable with Highland Ranch for certain unlawful acts of Highland Ranch, that it has been ordered to offer reinstatement to a former Highland Ranch employee, and that it has been ordered to cease violating the Act and not to engage in future violations.

To this end I shall recommend:

(1) That Respondent San Clemente be ordered to distribute a copy of the attached Notice to San Clemente Employees to each of its employees.

(2) That Respondent San Clemente be ordered to post the Notice at all places at San Clemente Ranch where notices affecting employees are customarily posted for a period of 60 days.

(3) That the Notice be posted and distributed in both Spanish and English.

(4) That Respondent San Clemente shall preserve and, upon request, make available to the Board, and its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due employees under the terms of the recommended order.

(5) That Respondent San Clemente shall execute the Notice to San Clemente Employees attached hereto, and upon its translation by a Board agent into Spanish, shall reproduce sufficient copies in each language for the purposes set forth herein.

(6) That Respondent San Clemente shall post copies of the Notice for 60 consecutive days at places to be determined by the Regional Director and shall exercise due care to replace any Notice which has been altered, defaced or removed.

(7) That Respondent San Clemente shall mail copies of the attached Notice to San Clemente Employees, in appropriate languages, within 30 days from the receipt of this proposed order, to all employees employed between December 9, 1977, and the date on which San Clemente commences to bargain in good faith and thereafter bargains to contract or impasse.

(8) That Respondent San Clemente shall notify the San Diego Regional Director in writing, within 30 days of the receipt of this proposed order, what steps have been taken to comply with it, and that Respondent shall, upon request, notify the Regional Director periodically what further steps have been taken in compliance with the proposed order.

The complaint prays that the General Counsel be awarded reasonable attorneys' fees, costs of litigation and costs of investigation. Respondent San Clemente persuasively argues that the rationale of Western Conference of Teamsters (V. B. Zaninovich and Sons, Inc.), 3 ALRB No. 57 (1977), requires rejection of the requested award. Certainly presenting a defense with respect to a major issue not yet decided by the Board cannot be regarded as frivolous, nor can the need to mount a defense be regarded as frivolous when the General Counsel seeks to hold San Clemente liable for unlawful acts of Highland Ranch.

Although the issues tried by Highland are not unique, their disposition in most instances depended upon credibility resolutions. Respondent Highland's version of the facts with respect to the various violations charged constituted something more than a frivolous defense. Adam Dairy, supra, at p. 32, n. 10.

I shall not recommend that the General Counsel be awarded attorneys' fees, litigation costs or investigation costs.

Upon the basis of the entire record, the findings of fact, the conclusions of law, and pursuant to Section 1160.3 of the

Act, I hereby issue the following recommended:

ORDER

Respondent Highland Ranch, its officers, agents, representatives, successors and assigns, and Respondent San Clemente Ranch, Ltd., its officers, agents, representatives and assigns, shall:

(1) Cease and desist from:

(a) Discouraging employees' membership in, or activities on behalf of the UFW, or any other labor organization, by terminating or by otherwise discriminating against employees in regard to their tenure of employment or any term of condition of employment, except as authorized by Section 1153(c) of the Act.

(b) Refusing to bargain collectively in good faith with the UFW as the exclusive representative of its agricultural employees as required by Sections 1153(e) and 1155.2(a) of the Act, and in particular: (1) refusing to meet at reasonable times and confer in good faith and submit meaningful bargaining proposals with respect to wages, hours and other terms and conditions of employment; (2) refusing to furnish the UFW with relevant and necessary information requested for purposes of bargaining; and (3) making unilateral changes in terms and conditions of employment of its employees without notice to and bargaining with the UFW.

(c) In any other manner interfering with, restraining or coercing employees in the exercise of those rights guaranteed them by Section 1152 of the Act.

(2) Respondent Highland Ranch and Respondent San Clemente shall jointly and severally take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Make Francisco Ruiz Guzman whole for any loss of overtime pay incurred because of his discriminatory removal from the shed crew on April 26, 1977, and because of the discriminatory refusal to return him to the shed crew, together with interest thereon at the rate of 7% per annum.

(b) Make Salvador Ramirez whole for any loss of pay he may have suffered because of the discriminatory refusal to assign him to tractor driving during the 1977 corn harvest, together with interest thereon at the rate of 7% per annum.

(c) Make Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores whole for any loss of pay incurred during November, 1977, because of his discriminatory discharge on November 1, together with interest thereon at the rate of 7% per annum, and make each of them whole for any loss incurred by reason of his eviction from the labor camp of Respondent Highland Ranch on November 1, 1977.

(d) Offer Francisco Perez Navarro immediate and full reinstatement to his former or a substantially equivalent job without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay incurred because he was. discriminatorily discharged on August 9, 1977, together with interest thereon at 7% per annum.

(e) Make Bartolo Prado Navarro whole for any loss of pay incurred because of the discriminatory refusal to grant him an emergency leave on September 2, 1977, together with interest thereon at the rate of 7% per annum.

(f) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due employees under the terms of this Order.

(3) Respondent Highland Ranch shall take the following additional affirmative action deemed necessary to effectuate the policies of the Act:

(a) Make Salvador Guzman Ortiz whole for any loss of pay he may have suffered because of his discriminatory discharge, together with interest thereon at the rate of 7% per annum.

(b) Upon request, bargain collectively with the UFW with respect to the effects upon its employees of its termination of operations, and reduce to writing any agreement reached as a re suit of such bargaining.

(c) Pay its terminated employees their normal wages for the period set forth in this Decision.

(d) Furnish the UFW with the information requested by it relevant to the preparation for and conduct of collective bargaining.

(e) Execute the Notice to Highland Ranch Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereafter.

(f) Mail copies of the attached Notice in appropriate languages, within 30 days from receipt of this Order, to all employees employed between July 28, 1977, and December 1, 1977.

(g) Notify the Regional Director in writing, within 30 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

(4) Respondent San Clemente shall take the following affirmative action deemed necessary to effectuate the purposes of

the Act:

(a) Upon request, bargain collectively with the UFW as the exclusive representative of its agricultural employees, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Furnish to the UFW the information requested by it relevant to the preparation for and conduct of collective bargaining.

(c) Make whole those employees employed by Respondent San Clemente in the appropriate bargaining unit at any time between the date of Respondent's first refusal to bargain at about December 9, 1977, to the date on which Respondent San Clemente commences collective bargaining in good faith and thereafter bargains to contract or impasse, for any losses they may have suffered as a result of the aforesaid refusal to bargain in good faith, as those losses have been defined in Adam Dairy, 4 ALRB No. 24 (1978).

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due employees under the terms of this Order.

(e) Execute the Notice to San Clemente Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereafter.

(f) Post copies of the attached Notice for 90 consecutive days at places to be determined by the Regional Director. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(g) Mail copies of the attached Notice in appropriate languages, within 30 days from receipt of this Order, to all employees employed between December 9, 1977, and the date on which Respondent commences to bargain in good faith and thereafter bargains to contract or impasse.

(h) A representative of Respondent or a Board agent shall read the attached Notice in appropriate languages to the assembled employees of Respondent on Company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within 30 days from the date of the receipt of this Order, what steps have

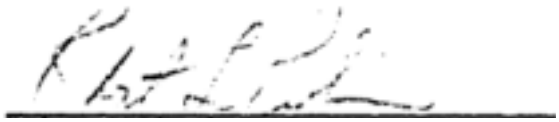
been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

It is further recommended that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive bargaining representative for Respondent's agricultural employees be extended for a period of one year from the date on which Respondent San Clemente commences to bargain in good faith with said Union.

It is further recommended that all allegations contained in the complaint and not found to be violations ox the Act be dismissed.

Dated: September 6, 1978

AGRICULTURAL LABOR RELATIONS BOARD



By__
Robert LeProhn
Administrative Law Officer

NOTICE TO HIGHLAND RANCH EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to mail this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

(1) To organize themselves;

(2) To form, join or help any union;

(3) To bargain as a group and to choose anyone they want to speak for them;

(4) To act together with other workers to try to get a contract or to help or protect each other; and

(5) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain with the UFW about a contract because it was the representative chosen by our employees.

WE WILL pay each of the employees employed by us on November 29, 1977, their normal wages for a period required by a Decision and Order of the Agricultural Labor Relations Board.

WE WILL jointly and severally with San Clemente Ranch, Ltd., give back pay and interest as required by a Decision and Order of the Agricultural Labor Relations Board to the following:

Francisco Perez Navarro
Fermin Galvan Torres
Salvador Ramirez Ramirez
Jose Magana Martinez
Salvador Flores Francisco
Ruiz Guzman Bartolo Prado
Navarro

WE WILL jointly and severally with San Clemente Ranch, Ltd., pay the following employees for losses resulting from their eviction from the Highland labor camp:

Fermin Galvan Torres
Salvador Ramirez Ramirez
Jose Magana Martinez
Salvador Flores

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HIGHLAND RANCH, INC.

By _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

NOTICE TO SAN CLEMENTE RANCH, LTD. EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered, and, also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

(1) To organize themselves;

(2) To form, join or help any union;

(3) To bargain as a group and to choose anyone they want to speak for them;

(4) To act together with other workers to try to get a contract or to help or protect each other; and

(5) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain with the UFW about a contract because it is the representative chosen by Highland Ranch employees and we are a successor to Highland Ranch.

WE WILL reimburse each of the employees employed by us after December 9, 1977, for any loss of pay or other economic benefits sustained by them because we have refused to bargain with the UFW.

WE WILL reinstate Francisco Perez Navarro to his former job at Highland Ranch and jointly and severally with Highland Ranch give him back pay plus 7% interest for any losses he had while he was off work.

WE WILL jointly and severally with Highland Ranch give back pay plus 7% interest to Fermin Galvan Torres, Salvador Ramirez Ramirez, Jose Magana Martinez and Salvador Flores for any losses that they had while they were off work in November, 1977. WE WILL jointly and severally with Highland Ranch pay these persons for any losses suffered as a result of their eviction from the Highland labor camp on November 1, 1977, plus 7% interest.

WE WILL jointly and severally with Highland Ranch give pay plus 7% interest to Salvador Ramirez Ramirez for any losses he had by not being assigned to drive harvest tractor during Highland Ranch's 1977 corn harvest.

WE WILL jointly and severally with Highland Ranch give pay plus 7% interest to Francisco Ruiz Guzman for any loss of overtime work he had because he was taken off packing shed work.

WE WILL jointly and severally with Highland Ranch give pay plus 7% interest to Bartolo Prado Navarro for any loss of pay he had by being denied an emergency leave of absence.

SAN CLEMENTE RANCH, LTD.

By _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

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